TRANSCRIPT OF RECORD

United States Court Of Appeals

TENTH CIRCUIT

No. 5610

LUPE ALONZO, JIM ALONZO, JOE ALONZO and VALENTINO ALONZO, Appellants,

vs.

UNITED STATES OF AMERICA, Appellee.

Appeal From The United States District Court
For The District Of New Mexico

United States Court Of Appeals

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IN THE UNITED STATES COURT OF APPEALS
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LUPE ALONZO, JIM ALONZO, JOE ALONZO and
VALENTINO ALONZO, Appellants,

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UNITED STATES OF AMERICA, Appellee.

Points Upon Which Appellants
Intend To Rely.

1. The District Court erred in finding that the United States as a legal entity had such an interest in Civil 8016, Valencia County, State of New Mexico as would give it a right to petition the United States District Court for the District of New Mexico for a preliminary injunction enjoining the appellants in this Court from prosecuting the action in the State Court.

2. The District Court erred in finding that the United States alleged sufficient grounds in its petition to justify the issuance of the preliminary injunction.

3. The District Court erred in finding that there was sufficient evidence upon which to base the issuance of the preliminary injunction.

4. The District Court erred in issuing the preliminary injunction enjoining the appellants in this Court from prosecuting Civil Action 8016, Valencia County, State of New Mexico.

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Filed April 6, 1957.

Alonzo vs. United States of America

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

Pleas And Proceedings Before The Honorable Waldo H. Rogers, United States District Judge For The District Of New Mexico Presiding In The Following Entitled Cause:

UNITED STATES OF AMERICA, Plaintiff,

vs.

LUPE ALONZO, JIM ALONZO, JOE ALONZO, VALENTINO ALONZO, JAMES GARCIA, JOHN HERNDON and THE ANACONDA COMPANY (formerly ANACONDA COPPER MINING COMPANY, a corporation, Defendants.

No. 3407, Civil.

1] Complaint.

The United States of America, in its own behalf and in behalf of the Pueblo of Laguna, by Paul F. Larrazolo, United States Attorney for the District of New Mexico, acting under the authority of the Attorney General and at the request of the Secretary of the Interior, complains and alleges as follows:

First Claim for Relief
(Paguate Purchase Lands)

I. This Court has jurisdiction of this action under 28 U.S.C. sec. 1345.

II. The sovereignty of the United States was extended over the territory now included in the State of New Mexico (with exceptions not here material) by the Treaty of Guadaloupe Hidalgo (9 Stat. 922).

III. The Pueblo of Laguna is a nation or tribe of Indians recognized by Congress as a dependent Indian community, the

members of which are wards of the United States. The Pueblo of Laguna occupies (1) lands which are owned by the Pueblo in fee, subject to restrictions imposed by federal law which render such lands inalienable except with the consent of the United States, and (2) lands to which the fee title is owned by the United States for the use of the Pueblo of Laguna, as more specifically set forth in the following paragraphs.

2] IV. Prior to the Treaty of Guadaloupe Hidalgo, the Pueblo of Laguna possessed a good and complete title to all that tract of land within the territory of New Mexico known as the Paguate Grant or the Paguate Purchase.

V. The title of the Pueblo of Laguna to the lands within the Paguate Purchase was confirmed by Act of Congress of June 21, 1860, 12 Stat. 71, as Claim No. 30 on a list of claims recommended for confirmation by the Surveyor General pursuant to the Act of July 22, 1854, 10 Stat. 308, in his report and abstract marked Exhibit A as communicated to Congress by the Secretary of the Interior in his letter dated February 3, 1860.

VI. The title of the Pueblo of Laguna to the lands within the Paguate Purchase was further confirmed by a patent dated September 22, 1884, from the United States to the said Pueblo, which covered an area of 75,406.27 acres, more or less.

VII. By Act of June 7, 1924, 43 Stat. 636, hereinafter referred to as the Pueblo Lands Board Act, Congress created the Pueblo Lands Board and authorized said board to investigate the titles to lands claimed by the various Indian Pueblos under grants from Spain and Mexico.

VIII. The Pueblo Lands Board investigated the claim of the Pueblo of Laguna to the lands included in the Paguate Purchase and found there was a conflict between the Paguate Purchase and the Cubero Grant of 1833 as to a portion of the Paguate Purchase as described in the patent dated September 22, 1884. The Pueblo Lands Board further found that the title of the claimants to the Cubero Grant was superior to the claim of the Pueblo of Laguna, as to the conflicting portion of the Paguate Purchase. Under the Pueblo Lands Board Act, this finding had the effect of extinguishing the

claim of the Pueblo of Laguna to that portion of the Paguate Purchase in conflict with the Cubero Grant amounting to 10,601.86 acres, more or less.

3] IX. The Pueblo Lands Board found that there was a further conflict between the Paguate Purchase and the lands claimed by the owners of the Cebolleta Grant and certain private land claimants. The Board found that the claim of the Pueblo of Laguna was superior to the title of the adverse claimants.

X. The Pueblo Lands Board found that there was a further conflict between the Paguate Purchase and the lands claimed by the owners of the Baca Grant of 1769. The Board found that the claim of the Pueblo of Laguna was superior to the title of the adverse claimants.

XI. The Pueblo Lands Board determined that, except for the area of 10,601.86 acres, more or less, which was found to be a part of the Cubero Grant, the Pueblo of Laguna had a superior title to all of the land within the Paguate Purchase, as described in the patent dated September 22, 1884.

XII. Pursuant to section 3 of the Pueblo Lands Board Act, an action was instituted by the United States in the United States District Court for the District of New Mexico to quiet the title of the Pueblo of Laguna to the lands involved in the conflicts between the Paguate Purchase and the Cebolleta and Baca Grants, the title of said action being United States v. Armijo et al., No. 2080 in Equity.

4] XIII. On July 20, 1931, upon stipulation of the parties a final decree was entered by the United States District Court settling the conflict between the Paguate Purchase and the Cebolleta Grant. By this decree title was quieted against the United States and the Pueblo of Laguna in favor of the owners of the Cebolleta Grant and 72 private claimants to 10,698.93 acres, more or less, and title to 14,615.76 acres, more or less, involved in this conflict was quieted in the Pueblo of Laguna.

XIV. By final degree of November 7, 1931, filed November 9, 1931, in the United States District Court for the District of New Mexico, the conflict between the Paguate Purchase and the Baca Grant was settled. The decree quieted

title against the United States and the Pueblo of Laguna in favor of the claimants under the Baca Grant to 2,527.29 acres, more or less, and title to 3,853.63 acres, more or less, involved in this conflict was quieted in the Pueblo of Laguna.

XV. Subsequent to the entry of the final decrees as alleged in Paragraphs XIII and XIV above, plats were prepared in the General Land Office, now the Bureau of Land Management, showing the lands awarded to the Pueblo of Laguna, the owners of the Cebolleta Grant, including the 72 private claimants, and the owners of the Baca Grant, which plats were each approved on or about May 13, 1935, by the Judge of the United States District Court for the District of New Mexico as provided by section 9 of the Pueblo Lands Board Act. Said plats showing the ownership of the lands quieted in the Pueblo of Laguna remain of record in the Bureau of Land Management.

5] XVI. The Pueblo of Laguna remains the owner and entitled to the exclusive possession of 51,578.19 acres, more or less, of the original Paguate Purchase. (The 51,578.19 acres is the area of the original Paguate Purchase less 10,601.86 acres found by the Pueblo Lands Board to be a part of the Cubero Grant, and 10,698.93 acres decreed to the owners of the Cebolleta Grant and private claimants and 2,527.29 acres decreed to the owners of the Baca Grant in No. 2080 in Equity.) The 51,578.19 acres, more or less, are described as follows:

[The description is set out in the preliminary injunction, page 32 .]

8] There are excepted from the above described lands the lands awarded by the decrees in Docket No. 2080 to the owners of the Baca Grant, described more particularly hereinafter in Paragraph XXV, and the lands awarded the owners of the Cebolleta Grant, described as follows:

[The description is set out in preliminary injunction, page 34 .]

10] (The lands last above described overlap to some extent both the Baca and Cubero Grants.)

XVII. The Pueblo of Laguna, with the approval of the Department of the Interior, has granted the defendant Anaconda Copper Mining Company, now The Anaconda Company, a permit to prospect for uranium and other minerals associated therewith covering lands owned by the Pueblo of Laguna within the Paguate Purchase. The prospecting permit is dated October 18, 1951, and was approved by the Department of the Interior November 6, 1951. By amendments, the said prospecting permit has been reduced in acreage but as to the reduced acreage remains in full force and effect.

11] XVIII. The Pueblo of Laguna on March 27, 1952, granted the defendant, Anaconda Copper Mining Company, now The Anaconda Company, a mining lease for the extraction of uranium and other minerals associated therewith covering lots 2, 3 and 4, section 1, lots 1, 2 and 3 and SW 1/4 NE 1/4, section 2, Township 10 North, Range 5 West, and S 1/2 NE 1/4, section 34, E 1/2 SW 1/4, E 1/2 W 1/2 SW 1/4, S 1/2, NW 1/4, NW 1/4 SE 1/4 and S 1/2 SE 1/4, section 35 and S 1/2 SW 1/4 and SW 1/4 SE 1/4, section 36, Township 11 North, Range 5 West, N.M.P.M., containing 799.09 acres, more or less, within the Paguate Purchase lands as described in Paragraph LXV, which lease was approved May 7, 1952, by the Department of the Interior as required by law. The said mining lease remains in full force and effect. Defendant John Herdon is the General Manager of The Anaconda Company.

XIX. Beginning prior to the Treaty of Guadaloupe Hidalgo and at all times since, the Pueblo of Laguna has been and now is the owner in fee simple, subject to the restrictions on alienability imposed by the United States, of all the lands described in Paragraph XVI above and during all of that time the Pueblo of Laguna has been and now is in the open, notorious, actual, exclusive, continuous and adverse possession of said lands.

XX. The defendants Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia are members of the Pueblo of Laguna and as members have the right to the use and occupancy of the tribal lands of the Pueblo in common with all other members.

12] XXI. The defendants Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia are claiming some

right, title or interest, apart from their rights as members of the Pueblo of Laguna, in the lands described in Paragraph XVI above adverse to the Pueblo of Laguna, which constitutes a cloud upon the title of the Pueblo of Laguna to said lands.

Wherefore, the plaintiff prays that judgment be entered quieting the title of the Pueblo of Laguna to the lands within the Paguate Purchase described in Paragraph XVI above subject to the rights of The Anaconda Company under the prospecting permit dated October 18, 1951, as amended and supplemented, and under the mining lease dated March 27, 1952, as amended and supplemented, and adjudging that the defendants Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia have no right, title or interest in or to said lands, except such rights as they possess as members of the Pueblo of Laguna.

Second Claim for Relief
(Lands Purchased by the Pueblo of Laguna)

XXII. The plaintiff adopts by reference as part of its second claim for relief Paragraphs I, II, III and XX from its first claim for relief.

XXIII. The Pueblo of Laguna owns by purchase from the Board of Trustees of the Cebolleta Land Grant, a New Mexico corporation, the following described lands:

13] [Here follows the description of the lands. This description is set out in the preliminary injunction, page 35 .]

15] The said lands were conveyed to the Pueblo of Laguna by deed dated April 16, 1937, and recorded in the records of Valencia County, New Mexico, in Book A-31 at folio 240.

XXIV. The lands purchased by the Pueblo of Laguna and described in the foregoing paragraph are a portion of the lands awarded to the Board of Trustees of the Cebolleta Land Grant by the final decree of this Court of July 20, 1931, in Docket No. 2080 Equity as more specifically set out in Paragraphs IX, XII and XIII above.

XXV. The Pueblo of Laguna owns by purchase from Cruz

Baca and Tiburcia Baca, his wife, the following described lands:

[Here follows the description of the lands. This description is set out in the preliminary injunction, page 37 .]

20] (This description is based upon a survey of the lands made subsequent to the final decree in Docket No. 2080, resulting in minor corrections in the description and a small decrease in the acreage.) The said lands were conveyed to the Pueblo of Laguna by deed dated December 9, 1936, and recorded in the records of Valencia County, New Mexico, in Book A-31 at folio 86.

XXVI. The lands described in the foregoing paragraph are the identical lands awarded the owners of the Baca Grant by the decree of this Court in Docket No. 2080 Equity as more specifically set out in Paragraphs X, XII and XIV above.

XXVII. The Pueblo of Laguna owns by purchase from Cruz Baca and Tiburcia Baca, his wife, among other lands, the NE 1/4 sec. 21 and N 1/2 sec. 22, Township 11 North, Range 6 West, N.M.P.M. The said lands were conveyed to the Pueblo of Laguna by deed dated July 31, 1939, and recorded in the records of Valencia County, New Mexico, in Book A-33, at page 126. The lands conveyed by this deed are not within the Paguate Purchase, but adjoin it on the north.

XXVIII. The Pueblo of Laguna is the owner and entitled to the exclusive possession of all the lands described in Paragraphs XXIII, XXV and XXVII above.

XXIX. The defendants Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia are claiming some right, title or interest, apart from their rights as members of the Pueblo of Laguna, in and to the lands described in Paragraphs XXIII, XXV and XXVII above adverse to the Pueblo of Laguna, which constitutes a cloud upon the title of the Pueblo of Laguna to said lands.

21] Wherefore, the plaintiff prays that judgment be entered quieting the title of the Pueblo of Laguna in and to the lands described in Paragraphs XXIII, XXV and XXVII above

and adjudging that the defendants Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia have no right, title or interest in or to said lands, except such rights as they possess as members of the Pueblo of Laguna.

Third Claim for Relief
(El Rito, San Juan and Gigante Rancho Lands)

XXX. The plaintiff adopts by reference as part of its third claim for relief Paragraphs I, II, III and XX from its first claim for relief.

XXXI. The Pueblo of Laguna prior to the time the United States extended its sovereignty over such lands by the Treaty of Guadaloupe Hidalgo, 9 Stat. 922, had a good and complete title to lands now in the State of New Mexico known as the El Rito, San Juan and Gigante Ranchos. Those ranchos included, among others, the following described lands:

[The description is set out in the preliminary injunction, page 41 .]

22]XXXII. The title of the Pueblo of Laguna to the lands described in the foregoing paragraph was confirmed by Act of Congress of June 21, 1860, 12 Stat. 71, by patent dated September 22, 1884, from the United States to the Pueblo of Laguna, and by the report of the Pueblo Lands Board made pursuant to the Act of February 7, 1924, 43 Stat. 636.

XXXIII. The Pueblo of Laguna is the owner and entitled to the exclusive possession of the lands described in Paragraph XXXI above and beginning prior to the Treaty of Guadaloupe Hidalgo and at all times since has been in the open, notorious, actual, exclusive, continuous and adverse possession of such lands.

XXXIV. The defendants Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia are claiming some right, title or interest, apart from their rights as members of the Laguna Pueblo, in the lands described in Paragraph XXXI above adverse to the Pueblo of Laguna which constitues a cloud upon the title of said Pueblo.

Wherefore, the plaintiff prays that judgment be entered quieting title of the Pueblo of Laguna to the lands described in Paragraph XXXI above and adjudging that the defendants Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia have no right, title or interest in or to said lands, except such rights as they possess as members of the Pueblo of Laguna.

Fourth Claim for Relief
(Executive Order Indian Reservation Lands)

XXXV. The plaintiff adopts by reference as part of its fourth claim for relief Paragraphs I and XX from its first claim for relief.

23] XXXVI. By Executive Orders No. 1221, dated July 1, 1910, and No. 2549, dated March 21, 1917, there were withdrawn and set aside as a reservation for the Indians of the Pueblo of Laguna and such other Pueblo Indians as the Secretary of the Interior may see fit to settle thereon, the following lands among others:

Township 10 North, Range 4 West, N.M.P.M. Section 13, lots 1, 2, 3, 4 and 5, S 1/2 SW 1/4 and SW 1/4 SE 1/4 Section 14, lots 1, 2, 3 and 4 and S 1/2 S 1/2 Section 15, lots 1, 2, 3 and 4 and S 1/2 SE 1/4

Township 10 North, Range 5 West, N.M.P.M. Section 14, lots 5, 6 and 11 and SW 1/4 SW 1/4 Section 15, lots 5, 6, 7 and 8 and S 1/2 S 1/2 Section 16, lots 5, 6, 7 and 8 and S 1/2 S 1/2 Section 17, lots 5, 6, 7 and 8 and S 1/2 S 1/2 Section 18, lots 7, 8, 9, 10 and 11, SE 1/4 SW 1/4 and S 1/2 SE 1/4

Township 10 North, Range 6 West, N.M.P.M. Section 13, lots 2, 4, 6 and 8, S 1/2 S 1/2 Section 14, lots 2, 4, 6 and 8, S 1/2 S 1/2 Section 15, lots 2, 4, 6 and 8, S 1/2 S 1/2 Section 16, lots 2, 4, 6 and 8, S 1/2 S 1/2 Section 17, lots 5, 7, 8 and 9 and SE 1/4 SE 1/4

XXXVII. The United States owns the fee title to the lands described in the foregoing paragraph, which it holds in trust for the Indians of the Pueblo of Laguna, and is entitled to the exclusive possession of said lands.

24] The defendants Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia are claiming some right, title or interest, apart from their rights as members

of the Laguna Pueblo, in and to the lands described in Paragraph XXXVI above adverse to the United States and the Pueblo of Laguna which constitutes a cloud upon the title of the United States as trustee to said lands.

Wherefore, the plaintiff prays that judgment be entered quieting the title of the United States to the lands described in Paragraph XXXVI above and adjudging that the defendants Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia have no right, title or interest to the said lands except such rights as they possess as members of the Pueblo of Laguna.

25] Fifth Claim for Relief
(Individual Indian Allotments)

XXXIX. The NE 1/4, Section 20, Township 11 North, Range 3 West, N. M. P. M., has been allotted to Gurule Mexicana, an Indian. Trust patent No. 955415 issued to the allottee March 17, 1925, and the United States continues to hold said land in trust for said Indian.

XL. The SE 1/4, Section, Township 11 North, Range 3 West, N. M. P. M., has been allotted to Be chis ne pah, an Indian. Trust patent No. 955416 issued to the allottee on March 17, 1925. The allottee is now deceased and the United States continues to hold the land in trust for the Indian heirs of said allottee.

XLI. Lots 3, 4 and 5 and SE 1/4 SW 1/4 (SW 1/4) of Section 18, Township 10 North, Range 3 West, N.M.P.M., have been allotted to Charles Carr (Ze-na-lee), an Indian. Trust patent No. 900169 issued to the allottee March 21, 1923, and the United States continues to hold said land in trust for said allottee.

XLII. The United States is the owner as trustee of the allottees or their heirs and entitled to the exclusive possession of the lands described in paragraphs XXXIX, XL and XLI above.

XLIII. The defendants Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia are claiming some right, title or interest in and to the lands described in paragraphs

XXXIX, XL abd XLI above adverse to the United States and its Indian wards, which constitutes a cloud upon the title of the United States as trustee to said lands.

Wherefore, Plaintiff prays that judgment be entered quieting the title of the United States to the lands described in paragraphs XXXIX, XL and XLI above and adjudging that defendants Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia have no right, title or interest in or to said lands.

26]

Sixth Claim for Relief
(National Forest Lands)

XLIV. The following described lands, among others, have been reserved for and made a part of the Cibola National Forest in New Mexico:

Township 11 North, Range 7 West, N. M. P. M. Section 21, lots 1, 2, 3, 4 and 5 and N 1/2 Section 22, lot 5.

XLV. The United States is the owner of fee title and entitled to the exclusive possession of the lands in the Cibola National Forest described in the foregoing paragraph.

XLVI. The defendants Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia are claiming some right, title or interest in or to the lands described in paragraph XLIV above adverse to the United States which constitutes a cloud upon the title of the United States to said lands.

Wherefore, the plaintiff prays that judgment be entered quieting its title to the lands described in paragraph XLIV above and adjudging the defendants Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia have no right, title or interest to said lands.

Seventh Claim for Relief
(Public Domain)

XLVII. By virtue of the Treaty of Guadaloupe Hidalgo, 9 Stat. 922, the United States became the owner of all unappropriated lands within the area ceded to the United States

by that treaty, such lands coming a part of the public domain of the United States.

XLVIII. The United States is the owner and entitled to the exclusive possession of those public lands in Valencia County, New Mexico, described as follows:

27] Township 10 North, Range 3 West, N. M. P. M. Section 4, lots 1,2, 3, 4 and 5, S 1/2 NE 1/4, SE 1/4 NW 1/4, E 1/2 SW 1/4 and SE 1/4 Section 5, lot 1 Section 8, lots 1 and 2 and S 1/2 SE 1/4

Township 11 North, Range 3 West, N. M. P. M. Section 20, lots 1 and 2, N 1/2 NW 1/4, SE 1/4 NW 1/4, NE 1/4 SW 1/4 and SW 1/4 Section 30, lots 1, 2 and 3

Township 10 North, Range 7 West, N. M. P. M. Section 16, lots 11 and 12 Township 11 North, Range 7 West, N. M. P. M. Section 28, lots 5 (W 1/2 NW 1/4) and 6 W 1/2 SW 1/4)

XLIX. The defendants Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia are claiming some right title or interest in and to the lands desci bed in paragraph XLVIII above adverse to the United States, which constitutes a cloud upon the title of the United States to said lands.

Wherefore, plaintiff prays that judgment be entered quieting the title of the United States to the lands described in paragraph XLVIII above and adjudging that the defendants Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia have no right, title, or interest in or to said lands.

Eighth Claim for Relief
(Minerals reserved to the United States)

L. The plaintiff adopts by reference as a part of its eighth claim for relief, paragraphs I, II and XLVII from its first and seventh claims for relief.

LI. Stockraising homestead entries have been filed upon a part of the public domain in Valencia County, New Mexico, described as lots 10, 11, 12, 13 and 14, Section 4, and lots

1, 2, 3 and 4, Section 9, Township 10 North, Range 7 West, N. M. P. M., in which the coal and all other minerals were reserved to the United States pursuant to the Act of December 29, 1916, 39 Stat. 862. The United States is now the owner of all such reserved minerals with the right to prospect for and mine such minerals as provided by the Act of December 29, 1916, supra.

28] LII. The defendants Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia are claiming some right, title or interest in and to the minerals reserved to the United States in the lands described in the foregoing paragraph adverse to the United States, which constitutes a cloud upon the title of the United States to said minerals.

Wherefore, Plaintiff prays that judgment be entered quieting title of the United States to all coal and other minerals underlying the lands described in paragraph LI above and adjudging that defendants Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia have no right, title or interest in said minerals.

29] Ninth Claim for Relief
(Request for Injunction)

LIII. The plaintiff adopts by reference as a part of its ninth claim for relief paragraphs I through LII from its first, second, third, fourth, fifth, sixth, seventh and eighth claims for relief.

LIV. The defendants, Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia, have heretofore on or about January 25, 1957, filed a complaint in the District Court of Valencia County, New Mexico, which appears in the records of that Court as Docket No. 8016, a copy of which is attached hereto as Exhibit A. There are named as defendants in said complaint John Herndon, Anaconda Copper Mining Company, a corporation, the Pueblo of Laguna, an Indian Pueblo, Clemente Lente, as Governor of the Pueblo of Laguna, and in his individual capacity, Willie Creager, as a Member of the Board of the Pueblo of Laguna, and in his individual capacity, Joe Ross, as a Member of the Board of the Pueblo of Laguna, and in his individual capacity, Joe Marmon, as a Member of the

Board of the Pueblo of Laguna, and in his individual capacity, and Lee Marmon, as a Member of the Board of the Pueblo of Laguna, and in his individual capacity. This action, hereinafter referred to as Docket No. 8016, is now pending in the District Court of Valencia County, New Mexico.

LV. In Docket No. 8016, the plaintiffs in that action seek a writ of ejectment against the defendants there named and a judgment against them in the amount of thirty-one million dollars ($31,000,000.00), being the value of minerals alleged to have been unlawfully extracted from the land. While the plaintiffs in Docket No. 8016 seek only a judgment for possession and damages, they allege in their complaint that they are the owners in fee under a private land grant of the land described in the complaint. The purpose and effect of the complaint in Docket No. 8016 is to challenge the title and possession of the United States and the Pueblo of Laguna in the lands from which plaintiffs in Docket No. 8016 seek to eject the defendants, which lands are as follows:

30] (a) The 51,578.19 acres, more or less, of the original Paguate Purchase to which the Pueblo of Laguna retained title as a result of the Pueblo Lands Board Report and the final decrees in Docket No. 2080 in this Court, which lands are more particularly described in paragraph XVI of plaintiff's first claim for relief herein, except Lot 6, Section 4, Township 10 North, Range 3 West and Lot 5, Section 33, Township 11 North, Range 3 West, N. M. P. M.

(b) The lands purchased by the Pueblo of Laguna, being:

1. The 2,174.332 acres, more or less, purchased from the Board of Trustees of the Cebolleta Land Grant as more particularly described in paragraph XXIII of plaintiff's second claim for relief herein, and being a portion of the lands awarded the owners of the Cebolleta Grant by the decree of this Court of July 20, 1931, in Docket No. 2080.

2. The 2,519.028 acres, more or less, purchased from Cruz Baca and wife, and more particularly described in paragraph XXV of plaintiff's second claim for relief herein, and being the identical lands awarded Cruz Baca and wife by the final decree of this Court of November 7, filed November 9, 1931, in Docket No. 2080.

3. The portion of the lands purchased from Cruz Baca and wife by deed dated July 31, 1939, lying in sections 21 and 22, Township 11 North, Range 6 West, N.M.P.M., which lands lie outside of the original Paguate Purchase, and are more particularly described in paragraph XXVII of plaintiff's second claim for relief.

(c) Lands outside the Paguate Purchase but within the El Rito, San Juan and Gigante Ranchos and more particularly described in paragraph XXXI of plaintiff's third claim for relief herein.

(d) The lands outside the Paguate Purchase reserved for the Pueblo of Laguna by Executive Orders 1221 and 2549, and more particularly described in paragraph XXXVI of plaintiff's fourth claim for relief.

31]. (e) The lands outside the Paguate Purchase allotted to individual Indians and held by the United States in trust for the individual allottees, or their heirs, as more particularly described in paragraphs XXXIX, XL and XLI of plaintiff's fifth claim for relief herein.

(f) The lands outside the Paguate Purchase in the Cibola National Forest and more particularly described in paragraph XLIV of plaintiff's sixth claim for relief herein.

(g) The lands outside the Paguate Purchase which remain a part of the public domain and are more particularly described in paragraph XLVIII of plaintiff's seventh claim for relief herein.

(h) The minerals reserved to the United States under those lands outside the Paguate Purchase described in paragraph LI of plaintiff's eighth claim for relief herein.

(i) Lands within the original Paguate Purchase which were awarded to the owners of the Cebolleta Grant and 72 private claimants by the decree of this Court of July 20, 1931, in Docket No. 2080, and which were not subsequently purchased by the Pueblo of Laguna, but excepting therefrom the following described lands;

Township 11 North, Range 5 West, N. M. P. M. Section 19,

Lots 1, 2, 3 and 4 and S 1/2 S 1/2 Section 20, Lots 1, 2, 3 and 4 and S 1/2 S 1/2 Section 21, Lots 1, 2, 3 and 4 and S 1/2 S 1/2 Section 22, Lots 1, 2, 3 and 4 and S 1/2 S 1/2 Section 23, Lots 1, 2, 3 and 4 and S 1/2 S 1/2 Section 24, Lots 1, 2, 3 and 4 and S 1/2 S 1/2

Township 11 North, Range 6 West, N. M. P. M. Section 23, Lots 1, 2, 3 and 4 and S 1/2 S 1/2 Section 24, Lots 1, 2, 3 and 4 and S 1/2 S 1/2

(j) A portion, but not all, of the lands in the Cubero Grant where it overlapped the Paguate Purchase and as to which the Pueblo Lands Board determined the owners of the Cubera Grant had a superior title, and also an area in the Cubera Grant immediately south of the original Paguate Purchase.

32] (k) Lands outside the Paguate Purchase which were included in the grant of lands to the Santa Fe Pacific Railroad Company, the grant of school lands to the State of New Mexico, private land grants, private claims, and small holding claims, or which were disposed of under the public land laws of the United States.

LVI. In Docket No. 8016, the plaintiffs seek to oust the United States from lands to which it has title and which are in the possession of either the United States or its Indian wards and from lands to which the Pueblo of Laguna has title and possession under the guardianship of the United States. The United States is an indispensable party to Docket No. 8016. It is not a party to Docket No. 8016 and it cannot be made a party to that action. The United States, by filing this action, has brought before this Court all interested parties so that all conflicting claims may be litigated in one action. Any judgment entered in this action will be binding upon the Pueblo of Laguna and its officers since they are represented by the United States, and all other parties in Docket No. 8016 are named as defendants in this action.

LVII. The United States is entitled to have the title to the property claimed by it in its own behalf and title to the property claimed in behalf of the Pueblo of Laguna quieted as against any claims made by the defendants Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia.

LVIII. The United States as owner of the legal title to the property or as guardian of the Indians of the Pueblo of Laguna, which is the legal owner of the property and being in possession thereof, does not have an adequate remedy at law.

LIX. The aforesaid action, Docket No. 8016, in the District Court of Valencia County, New Mexico, instituted by the defendants Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia against the Pueblo of Laguna and the members of its tribal counsel and against The Anaconda
33] Company (including its General Manager), mineral lessee of the Pueblo of Laguna, is an attempt by said defendants to wrest possession from the United States and its wards in an action in which the United States is not and cannot be made a party, to the permanent and irreparable injury and detriment of the United States and its Indian wards. The mere pendency of the state court action constitutes a threat against and an interference with the substantial rights of the United States, its wards, and their mineral lessee in the property.

LX. The Anaconda Company has prospected upon the lands of the Pueblo of Laguna covered by its prospecting permit and its mining lease and has discovered a very valuable deposit of uranium-bearing ore. The said Anaconda Company has proceeded under its mining lease to develop a mine known as the Jackpile mine, from which large amounts of uranium-bearing ore are being removed. Under the lease between the Pueblo of Laguna and The Anaconda Company, the Pueblo has received royalties of approximately $2,900,000.00.

LXI. Docket No. 8016 in the District Court of Valencia County, New Mexico, is a law action for ejectment and damages. In the event a writ of ejectment were to issue in that case, that Court would be without the power possessed by this Court in this equity action to enter a decree determining the rights of the parties to the lands and minerals involved and at the same time protecting the interests of the United States in the continued and uninterrupted production from the Jackpile mine needed in the national defense effort.

LXII. The Jackpile mine is one of the largest, if not the largest, uranium producing mine in the United States. The

Atomic Energy Commission has entered into a contract with The Anaconda Company under which the Company has built a plant near Bluewater, New Mexico, for processing uranium-bearing ores into concentrates which are sold and delivered to the Commission. Over ninety per cent (90%) of the concentrates being produced at the Anaconda plant under said contract are derived from ores mined from the Jackpile mine. The uranium concentrates which were delivered by The Anaconda Company to the Commission from said plant during the calendar year 1956 accounted for more than thirty per cent (30%) of receipts from all domestic sources during that period. The continued and uninterrupted production of uranium-bearing ore from the Jackpile mine is of great importance to the uranium procurement program of the Commission and to the national defense.

LXIII. The Anaconda Company (formerly the Anaconda Copper Mining Company) a corporation, and John Herndon, its General Manager, are interested in this action on the side of the plaintiff and will be affected by the decree to be entered herein.

LXIV. The plaintiffs in Docket No. 8016 are members of the Pueblo of Laguna and as such members have shared in the use of the tribal lands of the Pueblo which are the subject matter of that action. As a result of having accepted such benefits, the said plaintiffs, who are defendants herein, are estopped to deny the title of the Pueblo of Laguna to its lands.

LXV. The defendants Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia have no right, title or interest in or to any of the lands described in paragraphs XVI, XXIII, XXV, XXVII, XXXI, XXXVI, XXXIX, XL, XLI, XLIV, XLVIII and LVIII above; neither the defendants nor their predecessors in interest have made any claim to the said lands, or any of them, adverse to the Pueblo of Laguna subsequent to the Treaty of Guadaloupe Hidalgo in the manner provided by Congress for asserting title to lands claimed under Spanish or Mexican land grants or otherwise; and said defendants are attempting in Docket No. 8016 in the District Court of Valencia County, New Mexico, to assert a stale claim which is barred by laches.

35] Wherefore, plaintiff prays that this Court enter an injunction permanently enjoining the defendants Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia, their agents, servants, employees and attorneys and all persons in active concert or participation with them from prosecuting or attempting to prosecute that certain action heretofore filed in the District Court of Valencia County, New Mexico, entitled Lupe Alonzo, et al., v. John Herndon, et al., No. 8016, in the records of said Court, insofar as said action relates to the lands and mineral rights described in paragraphs XVI, XXIII, XXV, XXVII, XXXI, XXXVI, XXXIX, XL, XLI, XLIV, XLVIII and LVIII above.

Plaintiff further prays that pending a final determination of this cause a preliminary injunction issue against the defendants Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia enjoining and restraining said defendants and each of them, their agents, servants, employees, attorneys and all persons in active concert or participation with them from prosecuting or attempting to prosecute the aforesaid action filed by the said defendants Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia in the District Court of Valencia County, New Mexico, entitled Lupe Alonzo et al. v. John Herndon et al. No. 8016, in the records of said Court, insofar as said action relates to the lands and mineral rights described in paragraphs XVI, XXIII, XXV, XXVII, XXXI, XXXVI, XXXIX, XL, XLI, XLIV, XLVIII and LVIII above.

Plaintiff prays for such other and additional relief as may be just and proper.

Paul F. Larrazolo
United States Attorney

Filed Feb. 21, 1957.

36] Exhibit A.

In the District Court of the Second Judicial District in and for the County of Valencia, State of New Mexico. Case No. 8016.

Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia, Plaintiffs, vs. John Herndon, Anaconda Copper Mining Company, a corporation, the Pueblo Of Laguna, an Indian Pueblo, Clemente Lente, as Governor of the Pueblo of Laguna, and in his individual capacity, Willie Creager, as a Member of the Board of the Pueblo of Laguna, and in his individual capacity, Joe Ross, as a Member of the Board of the Pueblo of Laguna, and in his individual capacity, Joe Marmon, as a Member of the Board of the Pueblo of Laguna, and in his individual capacity, and Lee Marmon, as a Member of the Board of the Pueblo of Laguna, and in his individual The State Of New Mexico capacity, Defendants, John Herndon, Anaconda Copper Mining Company, Pueblo Of Laguna, Clemente Lente, Willie Creager, Joe Ross, Joe Marmon, Lee Marmon.

Defendant - Greeting:

You are hereby commanded to appear before the Second Judicial District Court of the State of New Mexico sitting within and for the County of Valencia that being the County in which the complaint herein is filed within thirty days after the service of this summons, then and there to answer the complaint of the above named Plaintiff in the above causes.

You are notified that unless you so appear and answer the Plaintiffs will apply to the Court for the relief demanded in the complaint together with the costs of suit.

Witness the Honorable John B. McManus, Jr.
District Judge of the Second Judicial District Court of the State of New Mexico, and the seal of the District Court of Valencia County this 25th day of January, 1957

(Court Seal) Marybel F. Seery Clerk

Endorsement

The number and style of this case is stated above

Alonzo vs. United States of America

A statement of the nature of the action in general terms is Ejectment Action and Suit for Damages as per copy of complaint hereto attached

Chavez, Ortega & Robins Attorneys for Plaintiff Office and Post Office Address 610 Sunshine Bldg. Albuquerque, New Mexico. Arnold, Fortas & Porter - 1229 19th St., N.W., Washington 25 D. C. R. F. D. Arledge & Charles Driscoll - 612 Sunshine Bldg., Albuquerque, N. M.

37] In The District Court State Of New Mexico County Of Valencia Lupe Alonzo et al., Plaintiffs, -vs- John Herndon et al., defendants. No. 8016

Complaint.

Come now the plaintiffs and state:

I. That at all times pertinent hereto the plaintiffs have been residents of the State of New Mexico in possession of and owners in fee of and entitled to the exclusive possession of that certain tract of land within the County of Valencia, State of New Mexico commonly known as El Rancho Paguati and more particularly described as follows, to-wit:

38] Township Ten (10) North, Range Three (3) West: Sections 5, 6, 7, 8, 9, 17 and 18 Township Ten (10) North, Range Four (4) West: Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 Township Ten (10) North, Range Five (5) West: Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 Township Ten (10) North, Range Six (6) West: Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 Township Ten (10) North,Range Seven (7) West: Sections 2, 3, 4, 9, 10 and 16 Township Eleven (11) North, Range Three (3) West: Sections 19, 20, 29, 30, 31 and 32 Township Eleven (11) North, Range Four (4) West: Sections 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36 Township Eleven (11) North, Range Five (5) West: Sections 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36 Township Eleven (11) North,Range Six (6) West: Sections 19, 20, 21, 22, 25, 26, 27, 28, 30, 32, 33, 34, 35 and 36 Township Eleven (11) North, Range Seven

(7) West: Sections 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35 and 36.

II. That on or about the 18th day of October, 1951, the defendant, the Pueblo of Laguna, and the defendant, the Anaconda Copper Mining Company, a corporation, entered into a purported mineral prospecting permit and option to lease and said defendants in conjunction with the defendants, John Herndon, as General Manager of the defendant, the Anaconda Copper Mining Company, and in his individual capacity, Clemente Lente, as Governor of the Pueblo of Laguna, and in his individual capacity, Willie Creager, as a member of the Board of the Pueblo of Laguna, and in his individual capacity, Joe Ross, as a member of the Board of the Pueblo of Laguna, and in his individual capacity, Joe Marmon, as a member of the Board of the Pueblo of Laguna, and in his individual capacity, and Lee Marmon, as a member of the Board of the Pueblo of Laguna, and in his individual capacity, have subsequent to that date performed acts on the land described in paragraph I above contrary to and in conflict with the interest of the plaintiffs by reason of the joint occupation and possession by all of the aforesaid defendants of the described lands concurrently with the plaintiffs, thereby denying plaintiffs the exclusive possession thereof.

39] III. That each of the defendants named in paragraph II above have individually and jointly engaged in extensive prospecting by core drilling on the land described in paragraph I above and have extracted and continue to extract from said land valuable minerals.

IV. That the value of the minerals wrongfully extracted from the lands of these plaintiffs by the said defendants as alleged in paragraph III above is, to-wit: Thirty One Million Dollars ($31,000,000.00).

V. That the defendant, John Herndon, General Manager of defendant, the Anaconda Copper Mining Company, subsequent to the 18th day of October 1951, moved upon the property described in this complaint and continues to live on the premises.

40] VI. That the tract of land owned by plaintiffs is non-Indian land and for many years has been owned in fee by the plaintiffs and plaintiffs' predecessors in interest.

VII. That the tract of land owned by the plaintiffs is a private land grant made to plaintiffs' predecessors in interest and was a completed grant severed from the public domain at the time the territory of New Mexico was ceded to the United States by the Republic of Mexico.

VIII. That the plaintiffs are entitled to a writ of ejectment against the defendants, and are entitled to damages against the defendants, John Herndon, the Anaconda Copper Mining Company, the Pueblo of Laguna, Clemente Lente, as Governor of the Pueblo of Laguna, Willie Creager, Joe Ross, Joe Marmon and Lee Marmon, as members of the Board of the Pueblo of Laguna, in the sum of Thirty One Million Dollars ($31,000,000.00)

IX. That the defendant, Anaconda Copper Mining Company, has since the 18th day of October 1951 changed its name to the Anaconda Company and is herein designated as the Anaconda Copper Mining Company, as its name appears in the said prospecting permit and option to lease.

Wherefore, plaintiffs pray for judgment against the defendants as follows:

1. For a writ in ejectment against the defendants and each of them.

2. For damages in the amount of Thirty One Million Dollars ($31,000,000.00) against the defendants, the Anaconda Copper Mining Company, John Herndon, the Pueblo of Laguna, Clemente Lente, as Governor of the Pueblo of Laguna, and in his individual capacity, Willie Creager, as a member of the Board of the Pueblo of Laguna, and in his individual capacity, Joe Ross, as a member of the Board of the Pueblo of Laguna, and in his indivudual capacity, Joe Marmon, as a member of the Board of the Pueblo of Laguna, and in his individual capacity, and Lee Marmon, as a member of the Board of the Pueblo of Laguna, and in his individual capacity.

41]

Attorneys For Plaintiffs:
Lorenzo A. Chavez
Arturo G. Ortega
Melvin L. Robins
By Lorenzo A. Chavez

Alonzo vs. United States of America

Arnold, Fortas & Porter
By Walbro Hansler (approximate)
R. F. Deacon Arledge
Charles Driscoll
By R. F. Deacon Arledge

42] Motion Of The United States For Preliminary Injunction.

The United States of America by Paul F. Larrazolo, United States Attorney for the District of New Mexico, acting under authority of the Attorney General, moves the Court to grant a preliminary injunction herein restraining the defendants Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia and all persons in active concert or participation with them, from prosecuting or attempting to prosecute, pending the final determination of this action and until the further order of this Court, that certain action filed by Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia in the District Court of Valencia County, New Mexico, entitled Lupe Alonzo, et al., v. John Herndon, et al., No. 8016, in the records of said Court.

Albuquerque, New Mexico, February 21, 1957.

Paul F. Larrazolo
United States Attorney

Filed Feb. 21, 1957.

43] Order To Show Cause.

The plaintiff, United States of America, by Paul F. Larrazolo, United States Attorney for the District of New Mexico, in the above-entitled cause, having commenced an action in the United States District Court for the District of New Mexico against the above-named defendants, Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo, James Garcia, John Herndon and The Anaconda Company (formerly Anaconda Copper Mining Company), a corporation, and all persons in active concert or participation with said defendants, and the said above-named plaintiff having filed herein a

motion for a preliminary injunction directed against the said above-named defendants and all persons in active concert or participation with them, moving the Court to grant a preliminary injunction herein restraining the above said named defendants and all persons in active concert or participation with them, from prosecuting or attempting to prosecute, pending the final determination of the action filed herein by the plaintiff, United States of America, and until the further order of this Court, that certain action filed by Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia in the District Court of Valencia County, New Mexico, entitled Lupe Alonzo, et al., v. John Herndon, et al., No. 8016, in the records of said Court, on reading the Complaint and Motion filed in this cause by the plaintiff, United States of America, and it satisfactorily appearing to the Court therefrom that it is probable that a preliminary injunction pending the final determination of the action filed herein by the United States of America should issue.

44] And it further appearing from the allegations made in said Complaint and in said Motion by the plaintiff, United States of America, that it is probable that said defendants and all persons in active concert or participation with them should be temporarily enjoined from the prosecution of that certain action filed by Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia in the District Court of Valencia County, New Mexico, entitled Lupe Alonzo, et al., v. John Herndon, et al., No. 8016, in the records of said Court, pending the final determination of the action filed in the United States District Court for the District of New Mexico by the plaintiff, United States of America, now therefore,

It Is Hereby Ordered that the defendants, Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo, James Garcia, John Herndon and The Anaconda Company (formerly Anaconda Copper Mining Company), a corporation, be, and they are hereby cited to appear before this Court on the 12th day of March, 1957, at 9:30 o'clock A.M., of said date in the courtroom for the United States District Court for the District of New Mexico, in the Federal Building, in the City of Albuquerque, County of Bernalillo, State of New Mexico, then and there to show cause, if any they have, why a preliminary injunction pending the final determination of this cause filed in the United States District Court for the District of New Mexico

should not issue preliminarily enjoining the said above-named defendants, and all persons in active concert or participation with them, from prosecuting or attempting to prosecute that certain action filed by Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia in the District Court of Valencia County, New Mexico, entitled Lupe Alonzo, et al., v. John Herndon, et al., No. 8016, in the records of said Court.

45] Dated this 21st day of February, 1957.

Waldo H. Rogers
United States District Judge

Filed Feb. 21, 1957.

[A notice to defendants of an application for preliminary injunction was filed February 21, 1957.]

48] First Amended Complaint.

Comes now the United States of America, in its own behalf and in behalf of the Pueblo of Laguna, by Paul F. Larrazolo, United States Attorney for the District of New Mexico, acting under authority of the Attorney General and at the request of the Secretary of the Interior, and hereby amends its Complaint filed herein in the following respects:

I. The plaintiff adopts all of the allegations contained in the original Complaint filed herein, but makes the following amendments:

(a) At page 11 of plaintiff's Complaint, Paragraph XVIII, line 9, the letters "LXV" are hereby amended and changed to "XVI".

(b) At page 11, Paragraph XVIII, last line, the name "Herdon" is hereby amended and changed to "Herndon".

(c) At page 23 the number of the paragraph was not shown at the top of said page and the paragraph number "XXXVIII" is hereby inserted on said paragraph.

(d) At page 24, Paragraph XL, line 1, the said paragraph is hereby changed and amended to show the figure "20" immediately following the word "Section".

Paul F. Larrazolo
United States Attorney

Filed Feb. 25, 1957.

49] Affidavit In Response To Order To Show Cause.

State Of New York County Of New York ss.:

J. B. Knaebel, being duly sworn, deposes and says:

1. I am Assistant to the Vice President In Charge of Mining Operations of The Anaconda Company, one of the defendants herein, and my office is at 25 Broadway, New York 4, New York. From January 1951 to July 1956, I was Manager of Anaconda's New Mexico Operations, with headquarters at Grants, New Mexico. I am personally familiar with the facts set forth in this affidavit which is submitted in response to the motion herein by the plaintiff for a preliminary injunction restraining further prosecution of case No. 8016 now pending in the District Court of the Second Judicial District, County of Valencia, State of New Mexico, entitled Lupe Alonzo, et al., v. John Herndon, et al.

2. In the State court action, plaintiffs seek a "Writ in Ejectment" ousting Anaconda and the other defendants, including the Pueblo of Laguna, from lands which the Pueblo has held and occupied for many years and on which Anaconda has been mining and exploring for uranium ores for over five years under a lease and permit (as supplemented and amended) from the Pueblo of Laguna, approved by the United States, and without notice of those plaintiffs' claims prior to the commencement of their State court action in January 1957.

50] 3. The most important consideration now is for a prompt and final adjudication of the question of title in order to minimize the interference caused by this controversy with the development and mining of the uranium ores

vital to the national defense of the United States. I am informed that this can only be accomplished in this action, in which all the parties necessary have been joined, whereas continued prosecution of the State court proceeding, in the absence of the United States as a party, could be wholly inconclusive; there is no good reason for two litigations, one in the State court and one in the federal court, where one, in the federal court, will suffice.

4. In October 1951 the Pueblo of Laguna, with the approval of the United States, through the Department of Interior, granted Anaconda a permit to prospect for uranium and other minerals associated therewith on lands owned by the Pueblo, including the lands within the area known as the "Paguate Purchase" referred to in plaintiff's first claim for relief herein. This permit was negotiated with the Laguna Tribal Council and representatives of the United States Bureau of Indian Affairs. In addition to the Paguate Purchase lands, the prospecting permit covers portions of the lands described in the second, third and fourth claims for relief in the Government's complaint.

51] The permit provides that the Pueblo would grant Anaconda a mining lease on lands covered by the permit where Anaconda's "examinations and tests convince it there is a possibility or probability of developing a commercial mine." Pursuant to this provision, on March 27, 1952, the Pueblo of Laguna granted Anaconda a mining lease for the "Jackpile mine" located in the Paguate Purchase area. (The complaint, paragraph XVIII, describes the property subject to this original lease, but omits additional lands added to the lease by supplementary lease agreements of September 21, 1954 and November 8, 1956 - the lease now covers approximately 3,680 acres located in Sections 1, 2 and the East half of Section 3 of Township 10 North, Range 5 West and Sections 35, 36, the East half of Section 34, the South half of Section 26, and the Southeast one-quarter of Section 27 of Township 11 North, Range 5 West - all of which lands are claimed by plaintiffs in the State court action.) This lease continues or is renewable by Anaconda so long as the Company conducts mining operations on the property and pays the stipulated royalties to the Pueblo of Laguna on ores it mines. Royalty payments to December 31, 1956 total approximately $2,900,000.00.

5. In addition to royalty payments, Anaconda has incurred total expenditures for general development of lands held under the prospecting permit amounting to $1,484,847.19 as of December 31, 1956. To December 31, 1956, $6,824,853.59 has been expended by Anaconda for Contract and Company mine stripping of waste rock from the Jackpile Area. Some 24,758,394 tons have been so removed. Ore extraction
52] from Laguna Tribal Lands began in early 1953. To December 31, 1956, 1,050,482.22 dry tons have been so removed and delivered to Bluewater plantsite for treatment, 98.8% of which has come from the Jackpile mine with the balance from smaller isolated ore deposits elsewhere on the Laguna Reservation.

6. The uranium ores of the Jackpile mine are treated at Anaconda's Bluewater processing plant, about fifty miles from the Jackpile mine. This plant is now the largest of the twelve in operation in the United States, with about one-third of the total U.S. processing capacity. See Twenty-first Semiannual Report of the Atomic Energy Commission, p. 4 (January 1957). Initially, Anaconda's contract with the Atomic Energy Commission dated December 27, 1951 called for the construction by Anaconda of a limestone uranium ore treatment plant having a capacity of 200 tons per day. As the magnitude of the Jackpile ore body became known, this contract was amended to increase the daily capacity to 400 tons of ore for the treatment of sandstone uranium ores by the acid leach method and subsequently amended for increasing the plant so that, during 1956, it treated 2,800 tons of ore per day. About 90% of the ores processed at the Bluewater plant are from the Jackpile mine, which is Anaconda's largest uranium mine. To December 31, 1956, Anaconda has spent $26,069,000 for mine and plant facilities and equipment. Of this total $3,534,500 has been expended at the Jackpile mine to provide shops, housing facilities, railway haulage spur, ore crushing installations, and heavy equipment. The balance or $22,534,000 has been expended at Bluewater and in the town of Grants, New Mexico.

53] 7. Uranium ore bodies are extremely elusive, and difficult to find, and the search for them requires a great deal of time, painstaking effort, equipment, competent supervision, technical direction and expenditures of large sums of money.

8. Development work to increase production on existing ore bodies, such as the Jackpile mine, involves similar problems and considerations. Obviously, the belated claims advanced by plaintiffs in the State court action pose a serious problem with respect to the making of capital investments and the carrying out of projects planned by Anaconda before the commencement of the State court action -- estimated to cost about $1,200,000. Additionally, these claims present serious problems in making essential long-range plans and allocations of the Company's resources among the various projects in which it is involved or has under consideration. For these reasons, any delay in the resolution of this controversy may interfere with exploration and development work and consequently result in a smaller output of ores than could otherwise be anticipated.

9. The importance of the problem is further demonstrated by the fact that Anaconda has over 900 employees engaged in its mining and exploring operations on the lands in controversy and at its milling operations at Bluewater. These employees include approximately 265 Laguna Indians, over 200 of whom are employed at the Jackpile mine. The current annual wages of these Indians total about $1,500,000. Wage payments to the Indians by Anaconda have thus far totalled over $2,500,000, of which approximately $1,000,000 was paid in 1956. These employees all required training by Anaconda in order to qualify for the work. The reconstruction of this force of qualified employees, once it was dispersed as the result of any interruption of operations, would be a difficult and time-consuming task. In addition, any interruption of operations would result in the loss of highly trained technicians employed by Anaconda in its operations on the lands in controversy and at the Bluewater plant.

54] 10. In view of all these circumstances, it is of great importance to Anaconda that the present controversy be litigated in a single litigation in which all interested parties are joined, including the United States, in this Court.

Wherefore, I respectfully submit that the motion for a preliminary injunction should be granted.

J. B. Knaebel

Sworn to before me this 7th day of March, 1957.

John Browning
Notary Public State of New York
No. 24-0462000

Filed March 12, 1957.

Alonzo vs. United States of America

56] Preliminary Injunction.

This cause having come on for hearing on the twelfth day of March, 1957, on motion of the plaintiff for a preliminary injunction herein and a show cause order issued by this Court against Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo, James Garcia, The Anaconda Company and John Herndon, and the Court having orally entered herein findings of fact and conclusions of law;

It Is Ordered that a preliminary injunction be, and it is hereby, granted to the plaintiff, the United States of America, and the defendants herein, Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo, James Garcia, The Anaconda Company, and John Herndon, and all persons in active concert or participation with them are restrained, pending the final determination of this action and until the further order of this Court, from prosecuting or attempting to prosecute that certain action filed by said defendants Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia in the District Court of the County of Valencia, State of New Mexico, entitled Lupe Alonzo et al. v. John Herndon et al., No. 8016, in the records of said Court insofar as that action affects the lands claimed by the United States for the Pueblo of Laguna, which lands are more particularly described as follows:

57] Township 10 North, Range 3 West, N.M.P.M. Section 4, lot 6 Section 5, lots 2, 3, 4 and 5, W 1/2 E 1/2 and W 1/2 Section 6, all Section 7, all Section 8, lots 4, 5, 6 and 7, W 1/2 NE 1/4, W 1/2, NW 1/4 SE 1/4 Section 9, lots 6 and 7 Section 17, lots 6, 7 and 8 and NW 1/4 NW 1/4 Section 18, lots 6, 7, 8 and 9 and N 1/2 N 1/2

Township 11 North, Range 3 West, N.M.P.M. Section 19, lots 8, 9, 10, 11 and 12 and S 1/2 SW 1/4 Section 20, lot 3 Section 29, lot 3 Section 30, lots 4, 5, 6, 7 and 8, SW 1/4 NE 1/4, NW 1/4 SE 1/4 and W 1/2 Section 31, lots 3, 4 and 5, NW 1/4 and S 1/2 Section 32, lots 5, 6, 7 and 8 and SW 1/4 SW 1/4 Section 33, lot 5.

Township 10 North, Range 4 West, N.M.P.M. Sections 1 through 12, all Section 13, lots 6, 7, 8 and 9 and N 1/2 Section 14, lots 5, 6, 7 and 8 and N 1/2 Section 15, lots 5, 6, 7 and 9 and N 1/2 Section 16, lots 1, 3, 5 and 7 and N 1/2

Section 17, lots 1, 3, 5 and 7 and N 1/2 Section 18, lots 1, 2, 3, 5, 7 and 9 and NE 1/4 and E 1/2 NW 1/4

58] Township 11 North, Range 4 West, N.M.P.M. Section 19, lots 1, 2, 3, 4 and 5 and SE 1/4 SW 1/4 and S 1/2 SE 1/4 Section 20, lots 1, 2, 3 and 4 and S 1/2 S 1/2 Section 21, lots 1, 2, 3 and 4 and S 1/2 S 1/2 Section 22, lots 1, 2, 3 and 4 and S 1/2 S 1/2 Section 23, lots 6, 7, 8 and 9 and S 1/2 S 1/2 Section 24, lots 5, 6, 7 and 8 and S 1/2 S 1/2 Sections 25 through 36, all

Township 10 North, Range 5 West, N.M.P.M. Sections 1 through 12, all Section 13, lots 1, 2, 3 and 4 and N 1/2 Section 14, lots 1, 2, 3 and 4 and N 1/2 Section 15, lots 1, 2, 3 and 4 and N 1/2 Section 16, lots 1, 2, 3 and 4 and N 1/2 Section 17, lots 1, 2, 3 and 4 and N 1/2 Section 18, lots 1, 2, 3, 4, 5 and 6 and NE 1/4, E 1/2 NW 1/4

Township 11 North, Range 5 West, N.M.P.M. Section 19, lots 1, 2, 3 and 4 and S 1/2 S 1/2 Section 20, lots 1, 2, 3 and 4 and S 1/2 S 1/2 Section 21, lots 1, 2, 3 and 4 and S 1/2 S 1/2 Section 22, lots 1, 2, 3 and 4 and S 1/2 S 1/2 Section 23, lots 1, 2, 3 and 4 and S 1/2 S 1/2 Section 24, lots 1, 2, 3 and 4 and S 1/2 S 1/2 Sections 25 through 36, all

59] Township 10 North, Range 6 West, N.M.P.M. Sections 1 through 4, all Section 5, lots 1, 2, 3, 4, 5 and 6, SE 1/4 NE 1/4, SE 1/4 SW 1/4 and SE 1/4 Section 7, lots 1 and 2 Section 8, lots 1, 2, 3 and 4, E 1/2 and E 1/2 W 1/2 Sections 9 through 12, all Section 13, lots 1, 3, 5 and 7 and N 1/2 Section 14, lots 1, 3, 5 and 7 and N 1/2 Section 15, lots 1, 3, 5 and 7 and N 1/2 Section 16, lots 1, 3, 5 and 7 and N 1/2 Section 17, lots 1, 2, 3, 4 and 6

Township 11 North, Range 6 West, N.M.P.M. Section 19, lots 1, 2, 3 and 4 and SW 1/4 SW 1/4 Section 20, lots 1, 2, 3 and 4 Section 21, lots 1, 2, 3, 4 and 5, SE 1/4 SW 1/4 and S 1/2 SE 1/4 Section 22, lots 1, 2, 3 and 4 and S 1/2 S 1/2 Section 23, lots 1, 2, 3 and 4 and S 1/2 S 1/2 Section 24, lots 1, 2, 3 and 4 and S 1/2 S 1/2 Sections 25 through 27, all Section 28, lots 1, 2, 3 and 4, E 1/2, SE 1/4 NW 1/4 and E 1/2 SW 1/4 Section 32, lots 1 and 2 Section 33, lots 1 and 2, NE 1/4, E 1/2 NW 1/4 and S 1/2 Sections 34 through 36, all

60] Township 10 North, Range 7 West, N.M.P.M. Section 2, lots 1, 2 and 3 and NW 1/4 NW 1/4 Section 3, lots 1 and 2, N 1/2, SW 1/4 and W 1/2 SE 1/4 Section 4, lots 6, 7, 8 and 9, E 1/2 and E 1/2 NW 1/4 Section 9, lots 5, 6, 7 and 8 and E 1/2 NE 1/4 Section 10, lots 1, 2 and 3, NE 1/4 NW 1/4 and W 1/2 NW 1/4 Section 16, lots 8, 9 and 10

Township 11 North, Range 7 West, N.M.P.M. Section 21, lots 6, 7, 8, 9 and 10, SE 1/4 SW 1/4 and S 1/2 SE 1/4 Section 22, lots 5, 6, 7 and 8 and S 1/2 S 1/2 Section 23, lots 1, 2, 3 and 4 and S 1/2 S 1/2 Section 24, lots 1, 2, 3 and 4 and S 1/2 S 1/2 Section 25, lots 1, 2, 3, 4, 5, 6 and 7, NE 1/4 NE 1/4 and NW 1/4 NW 1/4 Section 26, all Section 27, all Section 28, lots 5 (NW 1/4 NW 1/4), 6 (SW 1/4 NW 1/4), 7 and 8, E 1/2 and E 1/2 W 1/2 Section 33, lots 5, 6, 7 and 8, E 1/2 and E 1/2 W 1/2 Section 34, all Section 35, lots 1, 2 and 3, NE 1/4 NE 1/4, W 1/2 NE 1/4, NW 1/4, N 1/2 SW 1/4 and SW 1/4 SW 1/4 Section 36, lots 1 and 2

There are excepted from the above described lands the lands awarded by the decrees in Docket No. 2080 to the owners of the Baca Grant, described more particularly hereinafter as the lands purchased from Cruz Baca and wife by deed dated December 9, 1936, and the lands awarded the owners of the Cebolleta Grant, described as follows:

61] Beginning at a point on the boundary line between the Cebolleta Grant and the Paguate Purchase as surveyed by F. E. Joy, U. S. Surveyor in 1917, said point being 40 chains East of the closing corner between Secs. 22 & 23, T. 11 N. R. 4 W., thence S. through the center of fractional Sec. 23, 38.62 chains to the quarter section corner between Sections 23 and 26 of said Township and Range; thence S. 40 chains to the center of Sec. 26; thence W. 39.92 chains to the quarter section corner between Secs. 26 and 27; thence S. 0. degrees 1' E., along the line between Secs. 26 and 27, 40.00 chains to the corner of Secs. 26, 27, 34 and 35; thence S. 89 degrees 55' W., 40.03 chains to the quarter section corner between Secs. 27 and 34; thence S. 40 chains to the quarter section corner between Secs. 33 and 34; thence W. 40.02 chains to the center of Sec. 33; thence N. 40 chains to the quarter section corner between Secs. 28 and 33; thence S. 89 degrees 58' W., 40.04 chains to the corner of Secs. 28, 29, 32 and 33; thence N. 0 degrees 03' W., 40 chains to

the quarter section corner between Secs. 28 and 29; thence W. 79.93 chains to the quarter corner between Secs. 29 and 30; thence S. 89 degrees 53' W., 80.06 chains to the quarter section corner between Secs. 25 and 30 on the line between ranges 4 and 5 W., T. 11 N.; thence entering T. 11 N. R. 5 W., and running W. through the center of Secs. 25, 26, 27 and 28, three and one-half miles to the center of Sec. 28, T. 11 N. R. 5 W; thence N. 40 chains to the quarter section corner between Secs. 21 and 28; thence W. between Secs. 21 and 28, 20 and 29, and between Secs. 19 and 30, two and one-half miles to the corner of Secs. 19, 24, 25 and 30, on the line between ranges 5 and 6 W., T. 11 N.; thence entering T. 11 N. R. 6 W., and continuing west along the line between Secs. 24 and 25, 79.96 chains to the corner of Secs. 23, 24, 25 and 26; thence S. 40 chains along the line between Secs. 25 and 26 to the quarter section corner between Secs. 25 and 26; thence W. through the center of Secs. 26, 27, 28 and fractional Sec. 29 to the intersection of the E and W. center line of said Sec. 29 with the Easterly boundary of the Cubero Grant; thence continuing Westerly across the Cubero Grant, through unsurveyed fractional Secs. 29 and 30 tangent to the quarter section corner on the East line of Sec. 25, T. 11 N. R. 7 W.; thence entering said T. 11 N. R. 7 W., and running Westerly along the E and W center line of said Sec. 25, projected across the Cubero Grant, and continuing along the E and W center line of Secs. 26 and 27 to a point on said center line in Sec. 27 due South from the southwest corner of the Cebolleta Grant; thence North across the NW 1/4 of Sec. 27 and continuing North across the SE 1/4 SW 1/4 and Lot 7 of Sec. 22 to the Southwest corner of said Cebolleta Grant; thence Easterly along that certain line defined by the Joy Survey as the South Boundary of the Cebolleta Grant, 1531.02 chains, more or less, to the place of beginning;

Lands Purchased by the Pueblo of Laguna
from the Board of Trustees of the
Cebolleta Land Grant

Beginning at the northeast corner of this tract, which is at the point of intersection of the north boundary of the Cubero Grant and the south Boundary of the Cebolleta Grant; thence with the north boundary of said Cubero Grant

S. 85° 24' W., 10.58 chains to angle point 1 of this tract and angle point 5 on the north boundary of the Cubero Grant; thence S. 6° 41' W., 25.20 chains to angle point 2 of this tract and the 2 mile corner on the north boundary of the
63] Cubero Grant; thence S. 5° 55' W., 9.83 chains to angle point 3 of this tract and angle point 6 on the north boundary of the Cubero Grant; thence S. 10° 38' E., at 9.50 chains intersect the line between Secs. 19 and 30, T. 11 N., R. 6 W., at 20.03 chains angle point 4 of this tract and angle point 7 on the north boundary of the Cubero Grant; thence S. 27° 34' W., 18.80 chains, angle point 5 of this tract and angle point 8 on the north boundary of the Cubero Grant; thence S. 45° 22' W., 10.00 chains, angle point 6 of this tract and angle point 9 on the north boundary of the Cubero Grant; thence S. 78° 24' W., 20.84 chains, angle point 7 of this tract and the 3 mile corner on the north boundary of the Cubero Grant; thence S. 78° 23' W., at 8.23 chains intersect the east and west center line of Sec. 30, T. 11 N., R. 6 W., which point is designated as angle point 8 of this tract, from which angle point 10 on the north boundary of the Cubero Grant bears S. 78° 23' W., 0.70 chains distant; thence West along the east and west center line of said Sec. 30, at 6.42 chains the 1/4 section corner between Secs. 25 and 30 on the west boundary of T. 11 N., R. 6 W.; thence West along the east and west center line of Sec. 25 of T. 11 N., R. 7 W., at 18.49 chains intersect the north boundary of the Cubero Grant, which point is designated as angle point No. 9; thence N. 31° 50' W., along the north boundary of the Cubero Grant, at 20.95 chains angle point 10 of this tract and the 4 mile corner on the north boundary of the Cubero Grant; thence N. 31° 57' W., 10.05 chains, angle point 11 of this tract and angle point 13 on the north boundary of the Cubero Grant; thence N. 64° 43' W., 5.00 chains, angle point 12 of this tract and angle point 14 on the north boundary of the Cubero Grant; thence S. 68° 23' W., 14.97 chains to angle point 13 of this tract and angle point 15 on the north boundary of the Cubero Grant; thence S. 7° 39' W., at 23.23 chains intersect the east and west center line of said Sec. 25, which point is designated as angle point 14 of this tract,
64] from which point angle point 16 on the north boundary of the Cubero Grant bears S.7° 39' W., 6.77 chains distant; thence West along the east and west center line of said Sec. 25, at 23.56 chains the 1/4 section corner between Secs. 25 and 26; thence West along the east and west center line of Sec. 26, at 39.925 chains the center 1/4 section corner of said Sec. 26 and at 79.85 chains the 1/4 section corner between Secs. 26 and 27; thence West along the east and west center line of Sec. 27,

at 39.92 chains the center 1/4 section corner of Sec. 27, and at 56.34 chains the southwest corner of this tract; thence North, at 40.15 chains intersect the line between Secs. 22 and 27 at a point from which the corner of Secs. 21, 22, 27, and 28 bears N. 89° 56' W., 33.47 chains distant, and at 86.73 chains the southwest corner of the Cebolleta Grant, which point is the northwest corner of this tract; thence S. 89° 38' E., along the south boundary of said grant 155.68 chains to the 2 mile corner on said south boundary of the Cebolleta Grant; thence S. 89° 43' E., 75.48 chains to the 3 mile corner on the said south boundary of the Cebolleta Grant; thence S. 89° 39' E., 46.47 chains to the northeast corner of this tract, the point of beginning, containing 2,174.332 acres.

65] Lands Purchased by the Pueblo of Laguna from Cruz Baca and Wife by Deed dated December 9, 1936

A tract of land in Valencia County, New Mexico, within the exterior boundaries of the Baltazar Baca and Sons Grant, and within the exterior boundaries of the tract known as "Paguate Purchase" of the Laguna Indian Pueblo, which is described as follows:

Beginning at the quarter section corner between Sections 4 and 9 in Township 10 North, Range 6 West, N.M.P.M.;

Thence S. 89° 58' W., 39.87 chains to the corner of Sections 4, 5, 8 and 9 of said Township and Range;

Thence S. 89° 57' W., along line between Secs. 5 and 8, 31.87 chains to point of intersection with the west boundary of the Baltazar Baca Grant, as surveyed by Pradt and Watts in 1878, and as shown upon the plat approved by the U. S. Surveyor General for New Mexico, on November 30, 1878, said plat being on file in the U. S. Public Survey Office at Santa Fe, New Mexico;

Thence along said west boundary N. 0° 3' E., 23.52 chains to angle point No. 23;

Thence N. 0° 7' E., 28.37 chains to the divide between Encinal and Cubero;

Thence along said divide N. 27° 30' E., 2.58 chains;

Thence N. 51° 45' W., 12.85 chains;

Thence N. 34° 00' E., 13.24 chains;

Thence N. 40° 30' E., 20.85 chains;

Thence N. 6° 30' E., 23.32 chains to a point on the east boundary of the Cubero Grant as originally surveyed by George H. Pradt in 1896 and resurveyed by Basil C. Perkins in 1917; the plats of said surveys being on file in the U. S. Public Survey Office at Santa Fe, New Mexico;

66] Thence along said east boundary of the Cubero Grant, N. 49° 11' E., 5.42 chains to the 7 mile corner on said Cubero Grant boundary;

Thence N. 49° 17' E., 11.03 chains to angle point No. 29;

Thence N. 28° 00' E., 44.93 chains to angle point No. 30;

Thence N. 29° 48' W., 10.00 chains to angle point No. 31;

Thence N. 1° 41' W., 14.00 chains to the 8 mile corner;

Thence N. 1° 45' W., 16 chains to angle point No. 32;

Thence N. 21° 12' E., 31.71 chains to angle point No. 33;

Thence N. 31° 23' W., 7.35 chains to angle point No. 34;

Thence N. 37° 00' W., 3.96 chains to the Northeast corner of the Cubero Grant;

Thence N. 57° 12' W., 25.57 chains to angle point No. 1 on the North Boundary of the said Cubero Grant;

Thence N. 75° 45' W., 26.36 chains to angle point No. 2;

Thence N. 85° 07' W., 1.54 chains to point on West boundary of the Baltazar Baca Grant;

Thence along said boundary N. 0° 24' E., 1.90 chains to the four mile corner on West Boundary of said Baltazar Baca Grant;

Thence N. 20.43 chains to a point on the South
67] Boundary of Cebolleta Grant and North Boundary of the Paguate Purchase Grant as originally surveyed by Sawyer and McBroom in 1876 and as resurveyed by Lee Scott in 1908 and by B. C. Perkins in 1917, the plat of said survey being on file in the U. S. Public Survey Office at Santa Fe, New Mexico;

Thence along said boundary S. 89° 44' E., 44.88 chains to the five mile corner on said Boundary;

Thence S. 89° 41' E., 39.57 chains to the 5 1/2 mile corner on said boundary;

Thence S. 89° 34' E., 54.66 chains to a point on the East Boundary of said Baltazar Baca Grant;

Thence South along East Boundary of said Baltazar Baca Grant, 6.20 chains to the 6 mile corner of said Grant Boundary;

Thence S. 0° 10' W. 20 chains to angle point No. 3;

Thence S. 27° 10' W. 52.08 chains to angle point No. 4;

Thence S. 48° 23' E. 14.97 chains to angle point No. 5;

Thence S. 19° 10' W., 16.02 chains to angle point No. 6;

Thence S. 21° 21' E., 26.97 chains to angle point No. 7;

Thence S. 27° 08' W., 15.02 chains to angle point No. 8;

Thence S. 50° 05' W., 9.02 chains to angle point No. 9;

Thence S. 3° 49' E., 6 chains to angle point No. 10, leaving Grant Boundary at this point;

68] Thence S. 32° 48' W., 13.12 chains to angle point No. 11;

Thence S. 24° 07' W., 15.80 chains to angle point No. 12;

Thence S. 20° 46' E., 1.57 chains to angle point No. 12 1/2;

Thence S. 63° 15' E., 1.49 chains to angle point No. 13;

Thence S. 0° 6' W., 12.02 chains to angle point No. 14;

Thence S. 37° 58' W., 3.20 chains to angle point No. 15;

Thence S. 51° 23' W., 3.36 chains to angle point No. 16;

Thence N. 71° 54' W., 3.84 chains to angle point No. 17;

Thence S. 2°32' W., 19.84 chains to angle point No. 18;

Thence S. 44° 35' E., 9.16 chains to angle point No. 19;

Thence S. 44° 39' W., 35.02 chains to angle point No. 20;

Thence S. 9° 28' W., 41.26 chains to the place of beginning, containing Two Thousand Five Hundred Nineteen and Twenty-eight thousandths (2,519.028) acres.

Lands Purchased by the Pueblo of Laguna
From Cruz Baca and Wife by Deed dated
July 31, 1939

Township 11 North, Range 6 West, N.M.P.M. Section 21, NE 1/4 Section 22, N 1/2

69] El Rito, San Juan and Gigante Rancho Lands

Township 10 North, Range 4 West, N.M.P.M. Section 15, lots 8, 10 and 11 Section 16, lots 2, 4, 6 and 8 and S 1/2 S 1/2 Section 17, lots 2, 4, 6 and 8 and S 1/2 S 1/2 Section 18, lots 4, 6, 8, 10 and 11, SE 1/4 SW 1/4 and S 1/2 SE 1/4

Township 10 North, Range 5 West, N.M.P.M. Section 13, lots 5, 6, 7 and 8 and S 1/2 S 1/2 Section 14, lots 7, 8, 9 and 10 and S 1/2 SE 1/4

Dated at Albuquerque, New Mexico, this 14th day of March, 1957.

Waldo H. Rogers
United States District Judge

L.A.C. C.D. R.S.F. B.G.J.

Filed March 14, 1957.

70] Notice Of Appeal.

To: Hon. Paul F. Larrazolo Attorney for Plaintiff
Iden & Johnson Attorneys for Co-Defendant

Notice is hereby given that Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo, James Garcia and John Herndon, defendants herein, hereby appeal to the United States Court of Appeals for the Tenth Circuit from the Order of the Court entered on the 13th day of March 1957 and the Preliminary Injunction entered on the 14th day of March 1957, which enjoined the proceedings in Cause No. 8016 in the District Court of Valencia County, New Mexico.

R. F. Deacon Arledge
Of Counsel for Defendants

Filed March 21, 1957.

71] Amended Notice Of Appeal.

To: Hon. Paul F. Larrazolo U. S. Attorney for the District of New Mexico Attorney for Plaintiff, Iden and Johnson Attorneys for John Herndon and the Anaconda Company, Co-Defendants

Notice is hereby given that Lupe Alonzo, Jim Alonzo, Joe Alonzo and Valentino Alonzo, defendants herein, hereby appeal to the United States Court of Appeals for the 10th Circuit from the order of the Court entered on the 13th day of March 1957, and the preliminary injunction entered on the 14th day of March 1957 in this cause, which order and preliminary injunction enjoined these defendants from proceeding in cause No. 8016 in the District Court of Valencia County, New Mexico.

72] Attorneys for Defendants:
Lorenzo A. Chavez
Arturo G. Ortega
Melvin L. Robins
Arnold, Fortas & Porter
R. F. Deacon Arledge
Charles Driscoll
By R. F. Deacon Arledge

Filed March 22, 1957.

[An appeal bond was filed March 22, 1957.]

Transcript Of Proceedings

Be It Remembered that the above-entitled cause came on for Hearing before The Honorable Waldo H. Rogers, U. S. District Judge, at Albuquerque, New Mexico, on an Order to Show Cause, on the 12th day of March, 1957, at 9:30 o'clock, A. M.; * * * * *

Mr. Larrazolo: The Plaintiff is ready.

The Court: What say the Defendants?

Mr. Chavez: The Defendants are ready, with this note of

explanation. The defendant, James Garcia, has contacted my office, and as a result of our conversation in my office, I do not know the status of the relationship between us and James Garcia, at this time. He asked that I advise the Court that he was standing still, insofar as I could understand.

The Court: Well, he had better come on in, I told him to, not to stand still, that is the poorest thing a defendant can do, in a proceeding like this. To come on in, that is what I want him to do.

Mr. Chavez: Whatever the Court does -- (Interrupted)

The Court: He will go with the rest of them, he may take a free ride, I don't know, but now then, you haven't filed a response of any kind?

Mr. Chavez: There has been no response filed.

The Court: All right, so I can determine the burden of proof, have you anything to say, this morning, any oral response, or anything, or not? You resist the Motion?

Mr. Chavez: Yes.

The Court: Why? That is what I want to know, why?

Mr. Chavez: Of course we resist it.

The Court: Why?

Mr. Chavez: We resist it, first, the primary position is that there is already pending, a case that will litigate or adjudicate the material questions in a case of competent jurisdiction.

The Court: That is the ejectment suit in Valencia County?

Mr. Chavez: That is right. The United States does not have such an interest, as entitles it to go into a separate Court, and I may advise the Court that subsequent to the filing of the suit in State Court, in Federal Court, the Complaint in State Court was amended to

eliminate from the property desoribed, such land as is claimed by the plaintiff in this case, to be owned either in fee simple by the United States, as private or public domain, such land as it is claimed by the plaintiff to be held by it in trust for the Pueblo of Laguna, thereby leaving in the State case, at this time, only the fee simple land allegedly owned by the Pueblo of Laguna.

The Court: Um-humm. So it leaves in there, then, the so-called fee simple land to the Pueblo, is that right?

Mr. Chavez: Which was claimed by the Pueblo, yes, Your Honor.

The Court: Yes, we don't need a play on words. The land the Pueblo pretends it owns?

Mr. Chavez: Your Honor puts it so -- the defendants, in the State suit, Pueblo of Laguna, and the individual defendants and Anadonda, have gone into the State Court, and by proper Motion, obtained a continuance within which to plead, depending on the judgment of this Court on this -- on the pending Motions.

The Court: The Anaconda did?

Mr. Chavez: The Anaconda did, too.

The Court: Courthouse rumor brought that to my ears, Mr. Chavez. How about the Pueblo of Laguna, did it go in, also? I mean, did it also get a stay in the -- (Interrupted)

Mr. Chavez: It did.

The Court: In the State Court?

Mr. Chavez: Yes, sir.

The Court: Judge, do you want something?

Mr. Johnson: If it please the Court, the defendants, John Herndon and the Anaconda Company, are ready, and the only response which we have filed, done this morning, is an affidavit.

The Court: Yes, I have read it, but I haven't studied it, because I got it a few minutes before I came in here. Well, I believe that is probably a sufficient statement of a response, in there, to have the Government proceed as to my jurisdiction, and to -- (Interrupted)

* * * * *

Mr. France: If Your Honor please, we have prepared a Memorandum on the law in this case, and I would like to submit it to the Court, at this time. Copies have been furnished opposing counsel.

The Court: Are there any other memoranda you would like to favor me with?

Mr. Chavez: We have a memoranda, but it has to be revised in some respects, and we would get it in to Your Honor early in the morning, or late in the afternoon.

The Court: Well, all right, I expected to decide this case, is the reason I was asking. All right. Okeh. I will listen to you very attentively.

Mr. France: If Your Honor please, this is an Action brought by the United States to quiet title to certain described lands in Valencia County, New Mexico, and for a Preliminary and Temporary Injunction against the prosecution of an Action pending in the District Court of Valencia County, in which the plaintiffs request possession of those lands and other lands, and also seek money damages for the alleged unlawful removal of minerals from those lands.

The matter is now before this Court on a Motion for Preliminary Injunction, and an Order to Show Cause has been issued by this Court, and served upon the defendants.

The State Court Action was brought by five members of the Pueblo of Laguna, whose names are Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia. The Defendants in the State Court Action are the Pueblo of Laguna, a number of officers of the Pueblo of Laguna, and the lessee, the Anaconda Copper Mining Company.

The Court: That is in the Valencia County suit?

Mr. France: That is in the Valencia County suit, and one -- the Anaconda holds the mining lease on a portion of the premises involved in both this suit and the Valencia County suit on which premises they have developed a Uranium mine which I will refer to, later, which is one of the largest, if not the largest Uranium producing mine in the United States.

The United States is not a defendant. Docket Number 8016, on the records of that Court.

The Complaint in Docket No. 8016 alleges that the plaintiffs therein, are the owners of what is known as the El Rito Paguate, or it is more commonly referred to as the Paguate Purchase. On page 2 of their Complaint they more particularly describe the lands involved.

I have mentioned, already, that Complaint has been amended, but I will deal with the original Complaint before the Amendment.

The lands, as more particularly described on page 2 thereof, failed to include very substantial areas of the Paguate Purchase, or the El Rito Paguate. It also includes lands lying outside the Paguate Purchase. Now, in the present Action in this Court, No. 3407, it is an Action brought by the United States, the five plaintiffs in the State Court Action are named as defendants. Also, the Anaconda and John Herndon, the official of that company, are named as defendants. The United States, of course, represents the interests of the Pueblo of Laguna, and of the official of that Pueblo who were named as defendants in the State Court Action. Therefore, all parties to the State Court Action are represented in this Action, and in addition, the United States is a party in this Action.

The Indians of the Pueblo of Laguna originally claimed all of the El Rito Paguate Purchase. They submitted evidence of their title to the Surveyor General, as authorized to the Act of 1854, subject to the Treaty of Guadalupe Hidalgo. The Surveyor General reported favorably thereon, his report was relayed to Congress, and Congress confirmed their title

by the Act of June 21, 1860. Subsequent to that, the lands were surveyed by the Surveyor General of the United States, and the Patent issued to the Pueblo on September 22, 1944.

By the express terms of the 1860 Act, this patent has the effect of a quitclaim deed from the United States to the Pueblo, and it covers all of the Paguate Grant, and also substantial areas of land outside of the Grant, claimed by the Indians under another chain of title. (Arguing and citing Cause 1876, U. S. vs. Joseph.)

The Court: I have read the Court file, for that matter.

Mr. France: Unless there is an objection, I would like to make it a record in this case.

The Court: Unless there is some objection?

Mr. Chavez: Yes, there is an objection. The litigation, I think it is 2080, would have no bearing on any material fact that would be necessary to determine the issues in this case, or on the Motion before the Court.

The Court: I had better get them in the record, before I can rule on them, at least. The weight of them and the materiality will be reserved. Otherwise, I will admit them.

(Whereupon, Plaintiff's Exhibit "A" was admitted in evidence, being a Certified copy of the decree in Cause No. 2080, Civil.)

Mr. France: The first three Claims for relief involved lands owned by the Pueblo of Laguna, but which are contended, by the Government, are restricted lands, and can only be disposed of by Congress.

Now, the other lands include lands outside the Paguate Purchase, lands reserved for its use by two Executive Orders, immediately south of the Paguate Purchase, and a small part of them is lands included in the State Court Action.

The Court: Have you folks made up any plats or maps, to make it clear?

Mr. France: I have some plats, here.

The Court: Have you shown it to the other side?

Mr. France: They haven't seen it.

The Court: I think I will understand everyone's argument better, if I have a plat.

Mr. France: The map at which you are now looking, Your Honor, has been designated as Map A, by me. The area outlined in red, is the original Paguate Purchase. The area north, with the blue outline, is the boundary of the Ceboletta Grant.

Now, if we can look at the next map, the one underneath, outlined in purple, here, are the lands included in the State Court Action. You will notice the Paguate Purchase lines are outlined with the heavy line, here (indicating), and there are substantial areas outside the Paguate Purchase. There are certain lands in the Cubero land, which are not described in the State Court Action. There are lands in the Cebolleta, that are not included in the State Court.

The Court: As originally filed, or amended?

Mr. France: No, sir, I can show you what the Amendment excludes, but I don't have a map. I mentioned that certain lands were lost to the Indians, they found that the Cubero Grant had a superior title. There is a slight conflict up here. The lands outlined in blue were lost to the owners of the Cebolleta Grant. The lands outlined in green were lost to the owners of the Baca Grant. So the decree in 2080 quieted title to the Indians in the Paguate Purchase outside the colored lines in this lands, and those are the lands included in the first Claim for Relief in the Complaint in this Action.

There is one small area in the extreme east end, which is in the Paguate Purchase and included in the Claim for Relief, which is not included in the State Court Action.

Now, the next map outlines in brown, the areas which were purchased by the Indians, as I mentioned a while ago. This was the Baca Grant, they purchased all of the lands of the Baca Grant. This, in brown, was lost to the Cebolleta

people, was repurchased by the Indians, but the Pueblo of Laguna did purchase this, outside of the Cebolleta Purchase, and that is included in the Amended Complaint, and also included in the Second Cause of Action, as well as these other two areas in the Government's Complaint.

The Second Cause of Action covers the lands outlined in blue. Then, the Pueblo of Laguna owned certain lands immediately south, acquired but included in the 1884 Patent. That is the area outlined in green on this map, this map being designated Map E. The area in the north part, north of the broken green line, is included in the State Court Action, and is included and is the land described in a Third Claim for Relief in the Action before this Court, this small area along the north end of the El Rito Grant.

(Whereupon, Mr. France then cited Lighter Minerals Inc., v. U. S., 352 U. S. 220.)

The Court: What interest do you claim in the United States of America, the Plaintiff in this case, claims in the lands involved in the Valencia County's State Court Suit, as Amended? What is the nature of the title, as you -- (Interrupted)

Mr. France: The title is a fee tile in the Pueblo of Laguna, subject to the restrictions that it cannot be encumbered.

The Court: As to alienation, as to the restraint of alienation?

Mr. France: Yes, sir.

The Court: All right.

Mr. France: And I will come to that in considerable detail, in a moment, with respect to those lands.

The Court: All right, go ahead.

(Whereupon, Mr. France then cited the Sandoval case of Heckman v. U.S, 224 U.S, 413; 322 U.S. 363; Civil Cause No. 3384, U. S. District Court; 189 Fed (2) 31.

(The Court Reporter marked Plaintiff's Identification No. "2", being an affidavit of John T. Sherman.)

The Court: You have already moved the introduction, any objection?

Mr. Chavez: There is no objection to it.

The Court: All right, it will be received.

(Plaintiff's Identification No. "2" admitted in evidence as Exhibit "B".)

The Court: Do you contend that if I do assume jurisdiction, if I do stay the proceedings in Valencia County, that the defendants Alonzo and Garcia, will be able to file a Cross Claim by way of ejectment?

Mr. France: No, sir.

The Court: They would be able to?

Mr. France: No, sir.

The Court: They would not be able to?

Mr. France: No, sir, that would be, in effect, a suit against the United States, and there can only be a suit against the United States in the manner prescribed. Congress has never consented to a suit on the lands of Indians, and that applies to Cross Claims, as well as primary Claims. That was 309 U. S. 495.

The Court: You don't have that in your brief?

Mr. France: No, sir. 309 U. S. 495. U. S. versus Shaw, and also, in the case of U. S. versus United States Fidelity and Guaranty Company, 309 U. S. 506, in which it was held that when the United States brought an Action, it did not consent to a Cross Complaint, or a Cross Claim of any kind, unless expressly authorized by Congress.

The Court: That consent has to be one that is predicated upon an Action of Congress?

Mr. France: Yes, sir. That is the way I understand the decisions in those two cases, Your Honor.

The Court: Well. Proceed. Now, I am just about to take a recess, I wanted to find out from the Plaintiffs, is anyone else going to argue for the Plaintiff at this time, Mr. France, or is that -- (Interrupted)

Mr. France: No, sir.

The Court: That is no indication it was incomplete, I just wanted to know, I just wanted to figure it out. All right, there may be rebuttal from somebody else, is that right? You can't tell, yet.

Mr. France: I don't know, yet, Your Honor.

* * * * *

The Court: Say, Mr. France, I want to visit with you some more. You said the defendants couldn't bring an Action for ejectment in a jury trial, how about a Cross Complaint on a Quiet Title?

Mr. France: They cannot bring a Quiet Title against the United States, if I properly understand the Shaw and U. S. F. & G. cases.

The Court: I have been reading Shaw. At the same time, in a negative way, I can refuse the relief you want, as to certain tracts, isn't that right?

Mr. France: You could refuse the Preliminary Injunction?

The Court: No, I am not talking about the Preliminary Injunction, I am talking about the final Action, in here. I would, at least, have power, as a U. S. Judge would, to refuse to quiet your title to certain lands.

Mr. France: If you found that the United States or the Pueblo Indians did not have a good title.

The Court: That is what I mean, and to enter a decree that they didn't. I don't know what the facts are, I haven't any idea.

Mr. France: I don't feel it is proper to quiet title on a preliminary injunction.

The Court: No, I am not even attempting to, but what I am trying to obtain is a concept of the powers of the United States District Court, where you bring a suit to quiet title against people, you have already stated and quoted the Shaw, and U. S. F. & G., I have only read the Shaw case, over the recess, which apparently is in line with what you said. I want to appraise it a little more, but I am now attempting to find out from you, if an equitable Cross Complaint, you think that is also within the ambit, the ambit of the Shaw and the U. S. F. & G. case?

Mr. France: I think a Cross Action against the United States is. I think the defendants, in their Complaint, complete title in their lands, and if they show title, this Court can say they have no right, title or interest, and it is a Quiet Title between the parties.

The Court: And that the defendants own it? Okeh, that is what I wanted to find out. Proceed for the defendants.

Mr. Chavez: If it please the Court, at this time the defendants, in 3407, move that the Motion praying for an injunction be denied, for failure of the movant to show grounds, sufficient grounds or proper grounds upon which an injunction could issue from this Court, enjoining the defendants from proceeding in the State Court proceedings.

The Court: Overruled.

Mr. Hamilton: May it please the Court.

The Court: Yes, Mr. Hamilton.

Mr. Hamilton: The issue in this case, is a comparatively simple one. It is whether a Federal District Court should issue an injunction directed to plaintiffs for maintaining a case in the State Court, staying them from prosecuting the case, and thereby staying the case, itself. This involves a question of the judicial frontier of State-Federal relationships, and for that reason, is one of the most important cases, which, in recent years, has reached the District Court

of the United States.

I am content with a great part of the Statement of Facts by my honorable colleague on the other side of the case, but because the fact serves as a background for my own argument, I should like very briefly, to re-trace some of that territory.

In this case, we are a bit bothered, because of the fact that the Show Cause Order is directed to us, and at two places in that Order, it is stated that it is probable that it will issue, and yet, to the contrary, the writ asked for, is a writ that is rarely used, only on exceptional cases, and issues only upon a showing that leaves no doubt to the contrary. In other words, the problems are set down against us, the presumptions on the other hand are against the issue of the writ.

Now, case No. 8016 was filed by citizens of New Mexico, in the State Court. The laws of New Mexico give standing, they create the cause of action, and they appoint the County in which the suit shall be brought, subject, of course, to a Motion for a Change of Venue. An Act of the Territory of New Mexico, which has been on the -- which is more than a hundred years old, and which is on the Statute Books, recognizes the right of Indians and Indian communities, as juristic persons, entitled to sue and to be sued, and consequently to take advantage of the State Action. It was not the intent, in filing the Complaint, to stage a controversy with the United States. The United States is not mentioned in the title, and is not referred to in the body of the Complaint, but after the Complaint in Federal 3407 was lodged, it was evident that the United States was claiming an overlap. For that reason, a Clarifying Amendment was filed to our Complaint, and this Clarifying Amendment, then, is of such a character as my colleague in the case will go into questions of lands and Territories, and things of that kind, a matter on which I am not competent to speak, but with the Clarifying Amendment, there is excluded from this case all lands which belong to the United States, as Sovereign, and all lands owned by the United States in which it holds a Possessory Interest. The result is that, then, 3407 is concerned with lands which, I am told, are not allotted lands, but I cannot speak on that, and in this Domain, if the United States has any road, that

is its road, only as a protector of the Indians (citing Leader case; p 169 Felix Cohen Handbook; 28 Judicial Code 2283.)

Mr. Chavez: U. S. versus Minn (also citing Candelaria case; Martinez v. Martinez, 49 N. M. 83; Leader Minerals v. U. S; Cinsco v. U. S. 208 F. (2) 406, Certiorari denied 348 U. S. 818; Bank of New York, 296 U. S. 463; Heller case, 1923, 291 Fed. 416; p. 169 Cohen Handbook).

The Court: They say the restricted Indian Lands is land in which the United States has an interest. The Supreme Court said that, Mr. Chavez.

(Whereupon, Mr. Chavez also cited Article 21, Sec. 2, New Mexico Constitution; Utah Code Anno. 1953, Vol. 1, Article 3, Sec. 2, second paragraph.)

Mr. Chavez: I may state, in summary, that the plaintiffs come in here, in the only two cases where the plaintiff, the United States of America, in this Court, where they can show an Injunction has been issued to stay the Court proceedings, would be the Leader case, and in that case, the Courts entitled the United States to the mineral interest was at issue, and the Ava case, likewise. The case where the interest has not been sufficient, such as the Parkhurst case, the Motion to enjoin has been denied.

I may say they have put forward an affidavit by J. D. Nagle, as to the operation of the mining property, the suit in the State Court has been pending, now, for some twenty-two -- twenty-three days, and I don't think any interruption in the mining operation has taken place. The suit in the State Court does not seek to interrupt the operations, at all, insofar as there being a National interest, the operations have continued, and there is nothing in the State suit asking they be stopped, to injure the National interest, if there be such a National interest. Thank you, Your Honor.

The Court: Yes, is anybody else going to talk for the defendants, or not? I am just simply trying to work out a timetable, here. Judge Johnson?

Mr. Johnson: If they are through, may I make a --

The Court: No, I will tell you, I want to eat lunch,

before I hear you. Half past one. Thirty minutes after one, we will be in recess.

(Whereupon, at 11:55 o'clock A. M., Court was recessed until 1:30 o'clock, P. M., at which time, the parties being present as at the morning session, the following proceedings were had.)

The Court: I understand Mr. Ortega has some words?

Mr. Ortega: Very brief, Your Honor.

The Court: That is all right, I have all day.

(Whereupon, Mr. Ortega cited 224 U.S. 413 (1912); 322 U. S. 363; 25 U. S. C. Sec. 175; 208 Fed. (2) 406; U. S. v. Parker; Cause No. 2283;)

Mr. Ortega: If it please the Court, there is another item from the argument. An affidavit was served on us approximately fifteen minutes before this proceeding began, by J. D. Nagle. We have not had, by virtue of the delayed service, the chance to prepare any counter-affidavits for filing in this cause, and we Pray leave to file such counter-affidavits as we deem would be correctly filed.

The Court: Well, now, this is by a co-defendant?

Mr. Ortega: So-called, Your Honor.

The Court: Um-humm. I am looking at the divider of the versus, in there. Well, I will see about that. Let me have that memorandum you argued from.

Mr. Ortega: Yes, Your Honor. It is not complete, Your Honor.

The Court: Well, it looks like it. Thirteen pages.

Mr. Ortega: We would request leave to submit such supplemental authorities as we might wish to submit, within a reasonable time, to further satisfy the Court.

Mr. Johnson: We wish to state our position. We are, of

course, a defendant in the State Court proceeding, in which, as of this time, a judgment of $31,000,000 is asked, and also, that we be ousted from the property.

Now, that suit stands, it is a deterrent to any business concern, as to what plans they may lay, as to what their future operations may be, they have no certainty, whatever. This litigation creates that uncertainty, whether it is in the Federal Court or in the State Court, but if my ears did not deceive me, I understand Mr. Chavez correctly, he stated that, after the State Court had concluded the litigation, and if it should be adverse to the Pueblo of Laguna, that the Government was in a position to come into the Federal Court, there is nothing to stop them, and relitigate the whole matter, if I correctly understood it, and I think that is true.

Now, if we were to follow what they want to do, we are exposed, for a much longer period of time, to the uncertainty of litigation. The Court will see, from the affidavit that has been filed, here, by Mr. Nagle, which I am quite sure they wouldn't be able to contradict his figures, that the Anaconda has spent a tremendous amount of money, already, that they have under consideration, at this time, further expansion of an affirmative nature, in the excess of $1,000,000 right now, and all those factors, right now, add up, so their standpoint, that we feel that this litigation should be in a Court that can make a final determination of the rights of the parties, and that we not be put to the expense and the time of going through State Court litigation, and then find that it still comes to the United States District Court for determination.

So we are very happy to be in a Court which, we understand, does have jurisdiction, and can take jurisdiction of all the parties that are involved, and that, once it is decided, here, everybody can go forward with some assurance that title has been established, one way or another.

The Court: You look happier than you usually do, in this Court. Mr. France, have you any rebuttal?

Mr. France: Yes, Your Honor, I would like to make a rebuttal.

The Court: Sure.

Mr. France: (Citing U. S. v. Equitable Trust, 283 U. S. 738; 145 Fed. (2) 622, Certiorari denied 324 U. S. 834.)

The Court: Now, you summarized the Government's interest in these lands, in what way?

Mr. France: Well, I think that is covered pretty well by the Sandoval and the Candelaria cases.

The Court: Is that it, is that what you are basing it on?

Mr. France: And Sec. 17 of the Pueblo Lands Board Act. I don't think a Statute is necessary. If there is no Statute, then the United States does not have the same right to go in and protect the lands. The Court in Sandoval and in Candelaria, made no such distinction. But if there is such a distinction, then there is Sec. 17 of the Pueblo Lands, and quoted on page 3 of the Government's brief.

The Court: Before I reflect my ideas, does the Government offer those maps for the purpose of illustration? You talked from them.

Mr. France: Yes, I would be glad to offer in evidence, the five maps which are designated as maps "A" through "E"./

The Court: Yes, well, we will mark them, we will put our brand on them, whatever it is.

(Plaintiff's Exbibit "C" through "G" marked and admitted in evidence.)

The Court: Have you any objection?

Mr. Chavez: Not for the purpose of illustration.

The Court: All right, fine. I have looked at the Exhibits and listened to the argument of counsel with a great deal of interest. This is a very important suit. I might have indulged in some informality a d alleged humor, at times, but that is not to be considered that I do not realize the extreme importance of this litigation to the defendants, here,

to the Laguna Pueblo, and to the Government.

It has been a pleasure to have such a cosmopolitan Bar arguing this matter. Mr. France, of the Department of Justice, Mr. Hamilton of Mr. Therman Arnold's law firm -- a partner of his, supplemented by home-grown attorneys. It certainly has been a pleasure. I appreciate it very much, and I think we have had the full sweep of the law, as it applies to the problem here involved.

I have recently had occasion to look into some phases of the law, which are, to me, most fascinating, and which are unknown, I would say, to ninety-eight per cent of even New Mexico lawyers, and one hundred per cent unknown to the balance of the Bar and the Courts of this nation. I am positive of that.

I am particularly interested in this case, because it does involve comity; comity between Federal and State Courts. The philosophical dissertation to which were treated by Mr. Hamilton, graphically brings that matter to a head, here. He said originally the difficulty was engendered by contests for fees. Luckily, neither the State Courts, nor we Federal Courts are employed in such a contest. We are much better off than State Courts, but that is all right, too, especially from my standpoint. So that -- but I imagine that was the story. It is now reflected in our Precinct Justice of the Peace Courts, where I practiced for so many years, to my horror.

But as to comity, I do have a predilection toward that doctrine, toward State rights, and I have an absolute feeling toward the doctrine of comity. I have listened enrapt, here, all morning, for forty minutes this afternoon. I will ask you to indulge me for two or three minutes, while I tell you what has happened when I have been so faithful to comity.

I had a case called "Your Food Stores", in here. They were -- they brought an Action here -- no, they had obtained a Labor Injunction in the State Court of Santa Fe, and they brought it over here. The National Labor Relations Board had established a floor, I believe it is, instead of a ceiling, a floor, and so the Inter-State volume wasn't enough for that body to make jurisdiction. There was a vacuum, so in the

interests of comity, I sent it on back. There wasn't anything I could do; there wasn't anything any Labor Relations Board would do. So I figured there was no finer Judge than the State Judge, let them litigate it. It was appealed, and I bit the dust on that. In other words, a vacuum or not, I should have denied it.

Then New Mexico, in loyalty to its citizens, requires Insurance Companies to put up certain securities up there with the State Treasurer. A two-bit Insurance Company went on the rocks, but they did have, even over the Statutory amount. Judge Carmody was having a Conservator appointed to administer the assets for the benefit of our New Mexico citizens. In came a Receiver appointed by my good friend, Judge Christensen. Judge Christensen, of the Federal Court of Utah, in here. I said "No, un-hunn, comity. Comity with the State Courts. I won't even hear about it." I went up to the Court of Appeals, and I bit the dust there, again. They said "No, that was up to Judge Christensen to exercise his" -- a Utah Judge. I don't care if he is a Federal Judge, or not, he is born in Provo, I know how that is, I was born in New Mexico, but they wanted him to exercise a discretion, and not me, in there, so there is the second one.

And there is a fellow by the name of Danny Rea. We have had some Marijuana. The U. S. Attorney's office -- no, they didn't make a mistake, I want to apologize, Mr. Larrazolo, it was the Narcotic Agent had the wrong kind of a Search Warrant. Everything was wrong with it. He had just transferred over from the State Agency; it came up in front of me. I quashed the Search Warrant, dismissed the Indictment. Then the Narcotics Agent went over into the State Court, filed a suit there. In came Mr. Rea -- he loved the Federal Court by then, he had had fine treatment -- he wanted an Injunction, he wanted me to use Contempt Proceedings against this Narcotic Agent. Well, I figured it was none of my business, it was up to the State. Besides, there was a case called Wolfe vs. Colorado, in there. So I figured Comity, Judge Arledge, Judge Tackett, whoever it was over there, there are plenty of good Judges. They appealed it to the Court of Appeals, and I didn't bite the dust, then, but they appealed to the Supreme Court of the United States, and I did. Those are three of the four reversals I have had in the past three years, from comity. I still have a predilection of comity, and I am a

State's Rights man, at heart, and I approach this problem very carefully, very cautiously.

I find that a portion, at least, of the premises involved in this case, are owned in fee by the Pueblo of Laguna, as the term "fee" is used in Indian Law. But there is ever present that interest in the Government of the United States. You can call it a Guardian, Trustee, Protector, whatever it is. To me, one type from the other is a distinction without a difference. The United States of America, in my opinion, has such an interest in all, at least, of the lands involved in both the Valencia County suit, and in the instant cause, as to predicate this instant Action, and justify the Injunctive relief here sought.

I have looked over the original Pleading in the Valencia County suit, and I note, among the Prayers, that they seek a large sum of money -- $31,000,000 from those persons named as defendants, including the Pueblo of Laguna, including Anaconda. I don't believe that I would predicate jurisdiction or Injunctive relief alone on the National defense, but I will add that to my primary basis, that is, the interest of the United States.

Now, there is some language of the Supreme Court of the United States that I don't think that you can ignore. It eminates from the case of U. S. vs. Sandoval, 231 U. S. 28. When they discussed Indian lands -- title to Indian lands -- Justice VanDevanter, who did know title to western lands and it multifarious forms, wrote this Opinion. Among other things he said this:

"It also is said that such legislation cannot be made to include the lands of the Pueblos, because the Indians have a Fee Simple Title."

This is legislation as to liquor.

"It is true that the Indians of each Pueblo do have such a title to all the lands connected therewith, excepting such as are occupied under Executive orders, but it is a communal title, no individual owning any separate tract. In other words, the lands are public lands of the Pueblo, and so the situation is essentially the same as it was with the Five

Civilized Tribes, whose lands, although owned in fee under patents from the United States, were adjudged subject to the legislation of Congress enacted in the exercise of the Government's guardianship over those tribes and their affairs."

I don't care whether it is Guardianship, a Ward, Trustee, a cestui que trust, or the Protector, over these Tribes, the United States of America, I think, has sufficient interest to maintain the suit and secure this Injunction. I will resist the allure offered by Mr. Ortega, of emancipating, as he says, the Laguna Pueblo. They haven't asked me to. I doubt if I could, I don't think they would want to pay $31,000,000 to be emancipated, either; right now. We will leave it up to our friends in Congress.

I have no idea, at all, what the theory of the defendants is, in this case; absolutely none. I hear Court-house corridor rumors about other theories of cases, but there is certainly not a syllable has reached my ear, and I don't know, but any theory or theories they have, can certainly be raised, and I will give it my rapt attention and careful consideration and study. I don't know what it is, but if there is a theory that they care to produce, I will certainly entertain it. I see no use of having the State case progress, especially if there would be an opportunity to go right in the face of any decree they had, and litigate it. Maybe, after I am in the case, the issues will be presented that will make it expedient, wise, legal and jurisdictional, for the State proceedings to continue. I can't dismiss Judge McManus' suit, he doesn't dismiss mine, but I am going to ask him -- I am going to ask these defendants. I might put it a little stronger than that, in the Preliminary Injunction, stay out of Las Lunas.

Court is in recess.

Mr. Larrazolo: Your Honor, could I just say a word? Could the comments of the Court, now, be made the Findings of Fact and Conclusions of Law?

The Court: They indeed are. That is why I talked so long.

Mr. Chavez: If the Court please, I think the time for

answering in Federal Court, is tomorrow. I wonder if we would have at least until Monday, if possible?

The Court: Next Friday, how will that be?

Mr. Chavez: A week from this coming Friday?

The Court: Yes, you indeed may. Court is in recess.

(Whereupon, at 2:23 o'clock, P. M., Court was recessed.)

Filed April 2, 1957.

[Plaintiff's exhibit A is composed of certified copies of the final decree, filed July 20, 1931, the final decree filed November 2, 1931, a stipulation as to final decree, filed November 9, 1931, and the final decree, filed November 9, 1931, in case No. 2080, United States District Court, District of New Mexico, United States of America, as Guardian etc., vs. Armijo et al. The original exhibit is on file in the Clerk's office.]

Plaintiff's Exhibit B.

In The United States District Court For The District Of New Mexico, United States Of America, Plaintiff v. Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo, James Garcia, John Herndon and The Anaconda Company (formerly The Anaconda Copper Mining Company), a Corporation, Defendants. Civil Action No. 3407.

Affidavit Of John T. Sherman District of Columbia SS:

I, John T. Sherman, of full age, being duly sworn upon my oath, depose and say:

1. I am Assistant Director for Domestic Procurement of the Raw Materials Division of the Atomic Energy Commission and in such capacity supervise purchase by the Atomic Energy Commission of uranium-bearing ores and concentrates derived from domestic sources.

2. The Atomic Energy Commission has entered into a contract with The Anaconda Company, a corporation organized under the laws of the State of Montana, under which contract said company has built a plant near Bluewater, New Mexico, for processing uranium-bearing ores into uranium concentrates which are sold and delivered to the Commission. Said plant is currently in operation and the uranium concentrates produced are being sold to the Commission. According to its terms, the contract will continue in full force and effect until March 31, 1962, or shortly thereafter unless a stipulated maximum amount of uranium concentrates is delivered prior to said time.

3. According to information available to me, over ninety (90) percent of the concentrates being produced at the Anaconda plant near Bluewater, New Mexico, under said contract are derived from ores mined from the Jackpile Mine located in Valencia County, New Mexico. No other uranium deposits in the immediate vicinity of said plant have been sufficiently developed to produce at this time the tonnage of uranium-bearing ore presently being mined at the Jackpile Mine, as aforesaid.

4. The uranium concentrates which were delivered by The Anaconda Company to the Commission from said plant during calendar year 1956 accounted for more than thirty (30) percent of all concentrate receipts from domestic sources during this period. This percentage is expected to be less in the year 1957 and subsequent years. However, any cessation of delivery of ore from the Jackpile Mine which might take place at this time which causes a shutdown or substantial reduction for any appreciable period in said production of uranium concentrate at the plant at Bluewater, New Mexico, and delivery of production to the Atomic Energy Commission would adversely affect the uranium procurement program of the Atomic Energy Commission. It would also have a clearly harmful effect on the Commission in meeting its responsibilities in connection with the national defense.

John T. Sherman

Subscribed and sworn to before me this 19th day of February, Nineteen Hundred Fifty-seven, at Washington, D. C.

(Seal)

Hannah W. Grosvenor
Notary Public

My Commission Expires April 14, 1960

[Plaintiff's exhibits C to G, inclusive, are the large maps, referred to at page 57 . The original exhibits are on file in the Clerk's office.]

77] Clerk's Certificate.

United States Of America, District Of New Mexico.

I, Wm. D. Bryars, Clerk of the United States District Court for the District of New Mexico, do hereby Certify:

That the attached and foregoing pages numbered 1 to 76, inclusive, are the original pleadings, order, Preliminary Injunction and other documents specified in the Designation of the Record on Appeal by the appellants in that certain civil action lately pending on the docket of said court entitled and numbered as shown by the title page of this record,

That the Reporter's Transcript of Proceedings, consisting of 32 pages, separately bound, is the original of said transcript as certified by the Reporter and filed in my office in said cause. That Plaintiff's Exhibits A thru G, separately bound, are the original exhibits filed in said cause.

Witness, my hand and the seal of said Court at Albuquerque, in said District on this the 5th day of April, 1957.

(Seal)

Wm. D. Bryars
Clerk of said Court

Filed United States Court of Appeals Tenth Circuit April 12, 1957, Robert B. Cartwright, Clerk.

Office - Supreme Court, U. S.
FILED
DEC 23 1957
JOHN T. [illegible], Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 682

LUPE ALONZO, JIM ALONZO, JOE ALONZO and VALENTINO ALONZO, *Petitioners*

v.

UNITED STATES OF AMERICA, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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December 23, 1957

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No.

LUPE ALONZO, JIM ALONZO, JOE ALONZO and VALENTINO ALONZO, *Petitioners*

v.

UNITED STATES OF AMERICA, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Come now the petitioners in the above-styled case, by the undersigned, their duly qualified attorneys, lodge with the Court this their Petition for a Writ of Certiorari directed to the United States Court of Appeals for the Tenth Circuit to review a judgment entered on September 25, 1957, and in support thereof recite, submit and pray as follows:

I. OPINIONS OF THE COURTS BELOW

The oral statement of the United States District Court for the District of New Mexico, dated March 12, 1957, is to be found in the transcript of record, pages 57-61.

The opinion of the United States Court of Appeals for the Tenth Circuit, dated September 25, 1957, as yet unreported, is for convenience set down as Appendix B to this Petition.

II. JURISDICTION

The jurisdiction of this Court is based on 28 U.S.C. § 1254(1) and 28 U.S.C. § 1651.

III. QUESTIONS PRESENTED

The questions raised here have their setting within the instant controversy. The Alonzos instituted a state court action for ejectment and damages against the Pueblo of Laguna and the Anaconda Company. The United States, professing to act as guardian to an Indian tribe, countered with a suit in the Federal District Court for quieting of title. It asked for an injunction staying the suit in the state court while that in the federal court went forward. The larger issue here is the validity of this injunction.

1. If the United States brings a federal action in behalf of a third party, is it entitled, in disregard of the rule of comity, to an injunction staying a previously instituted proceeding in a state court involving substantially the same matter?

(a) Is the immunity of the United States from 28 U.S.C. § 2283 limited to cases in which it has a property interest of its own, or is it a general immunity available to the United States in all cases to which it is a party?

(b) If the immunity is plenary in character, can it be transferred by the United States to a third party, as, for example, to an Indian Pueblo to which

it professes to act as "guardian" and to a corporation which is a lessee of the Pueblo?

2. In the absence of a positive showing that a guardian-ward relationship now exists or that the lands in dispute are validly restricted against alienation, does the United States have standing to sue in behalf of Indians?

(a) When in the Enabling Act by which it is admitted to the Union a State disclaims jurisdiction over lands acquired "through or from the United States or any prior sovereignty," does the disclaimer comprehend as well lands acquired by purchase?

(b) When by the terms of an Enabling Act a State excepts from its jurisdiction only Indian lands which were acquired "through or from the United States or any prior sovereignty," may the Congress at a later date impose restrictions against alienation upon lands acquired by purchase, thus by unilateral action amending a compact which is bilateral in character?

3. Is the United States acting in accord with equity and good conscience in asking a court of chancery for an extraordinary writ when it selects from among several adequate and available legal remedies the one which permits it to choose the forum and shape the cause of action, in disregard of the rights of other parties to the controversy and in derogation of the sovereignty of a State of the Union?

The matter is not pressed, but it would be remiss not to call the attention of the Court to the opportunity here offered to bring a bit of clarity into "Indian law." A conflict exists between the Court of Claims and the Tenth Circuit, not only in holdings but in philosophies. The approach of the Court of Claims

is current, dynamic and realistic; that of the Tenth Circuit archaeological. As its opinion in the instant case attests, in place of current fact, probing inquiry and biting analysis it substitutes dicta wrenched from context and prompted by situations which no longer exist. A single case may lessen somewhat, though it cannot clear up, the current confusion. The efficient administration of Indian affairs demands the reduction of undefined rules and amorphous concepts to articulate statement.

IV. STATUTES INVOLVED

Citations to the statutes involved in the present controversy are as follows:

The Rule of Comity, 28 U.S.C. § 2283.

Duty to Furnish Attorney, 25 U.S.C. § 175.

In re Restriction on Lands of Pueblos—Section 17 of Pueblo Lands Act of 1924, 25 U.S.C. § 331, Historical Note.

The New Mexico Enabling Act, Section 2(2), 36 Stat. 557, 558-559.

The Pueblo a Juristic Person, N. M. Stat. 1953, Sec. 51-17-1.

The text of the relevant provisions in these statutes is set forth in Appendix A.

V. STATEMENT OF THE CASE

The questions just presented draw their significance from the distinctive circumstances of this venture into litigation.

1. *The Original Case.* On January 28, 1957 the Alonzos filed a suit in the District Court of Valencia

County, New Mexico—referred to hereinafter as State-8016. By this action they sought the ejectment of the Pueblo of Laguna and its lessee, the Anaconda Company, from a part of the tract of land known as the Paguate Purchase, to which the Alonzos claim title. They also sought damages for the value of precious minerals, in particular uranium, which had been taken from the property.

The state court was the proper forum for this suit. The Alonzos could not have instituted the suit in a federal court even if they had chosen to do so. No federal question was involved; there was no diversity; and the subject of the suit—the determination of the ownership of a tract of real property—has been universally treated as lying within the special competence of state courts.[1] The proceeding was sanctioned by, and met all the requirements of, the law of New Mexico. The plaintiffs, as citizens of the State and of the United States, had standing to sue. The Pueblo of Laguna was a proper and suable entity. By an Act of the Territorial Legislature passed in 1847—an Act which still remains on the statute books[2]—it was constituted a body politic, capable of suing and being sued in any court of law or equity with respect to its lands. The fact that the Pueblos of New Mexico are juristic persons has been recognized in many judicial decisions.[3]

In State-8016 the United States was not named as a party defendant, and no item in the complaint

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[1] See, e.g., *United States* v. *Fox*, 94 U.S. 315 (1877).

[2] See. 51-17-1, N.M. Stat. 1953.

[3] See, e.g., *Lane* v. *Pueblo of Santa Rosa*, 249 U.S. 110 (1919) and *Martinez* v. *Martinez*, 49 N.M. 83, 157 P. 2d 484 (1945).

invited a controversy with the Federal Government. The state suit related to and involved rights of the Alonzos growing out of and fixed by transactions antedating the Treaty of Guadalupe Hidalgo by almost a century. It did not involve federal lands. To avoid even the semblance of a dispute, the Alonzos on March 11, 1957 filed a clarifying amendment to their complaint excluding from State-8016 any and all lands to which the United States claimed title, whether in its own right or as held in trust. The state proceeding, therefore, involved only private, non-federal lands held in fee which were acquired, either by the Alonzos or the Pueblo of Laguna, more than a century ago from a non-sovereign third party.

2. *The Blocking Suit.* The strategy of the defense has been not to meet, but to block, State-8016. The Alonzos had filed their action against the Pueblo of Laguna and the Anaconda Company as citizens suing citizens. No reply was made either by the Pueblo of Laguna or by Anaconda. Instead, on February 21, 1957, the United States entered the litigation by filing a blocking suit in the United States District Court for the District of New Mexico to quiet title to the lands in dispute—hereinafter referred to as Fed.-3407. Although this suit was cast in the form of an independent action, it was in reality an answer to the complaint of the Alonzos in State-8016.

By filing this second suit the United States has sought to transfer to the federal courts the suit brought by the Alonzos. The Pueblo of Laguna has been erased as a party to the controversy and the United States has been substituted in its stead. In suing in its behalf the United States treats the Pueblo of Laguna as Indians, not as citizens; it neglects the

fact that the Alonzos are also Indians. The second action converts a suit for ejectment and damages into a suit to quiet title and shifts the case from the law to the equity side of the calendar. In effecting these changes the United States has disturbed the balance of advantage and disadvantage between the contending parties. It has sought not only to select the forum but also to remake the cause of action, in disregard of the rights of the Alonzos as litigants and as citizens.

3. *Liquidation of the State Suit.* To complete the transfer, it was necessary to render State-8016 inactive and to leave Fed.-3407 in complete possession of the field. To that end, the United States moved for an injunction staying State-8016 until Fed.-3407 had been driven to its conclusion.

4. *The Barrier of Comity.* An obstacle to the grant of the stay was that the suit of the Alonzos in the state court had been filed first. The doctrine of comity, which antedates the formation of the Constitution, commands that as between courts of equivalent standing, that one which first obtains jurisdiction is to go forward and the other is to withhold its hand until the prior suit has terminated in a judgment. The United States contends that upon the authority of *Leiter Minerals, Inc.* v. *United States,*[4] it is immune to the mandate of 28 U.S.C. § 2283. The Alonzos contend that the immunity granted to the United States in the *Leiter* case is limited, not plenary, in character—that it does not extend to a case in which the United States has no property interest of its own but appears only as a representative of a third party.

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[4] 352 U.S. 220 (1957).

5. *Comment.* At this point it may not be improper to obtrude a comment. In *Parr* v. *United States*,[5] four Justices of this Court remarked upon the habit of the United States in "shopping around" for the most favorable forum. No one of the other five Justices defended the practice. In the instant case the impropriety—we employ the weakest of the relevant synonyms—of the United States goes far beyond the former instance. In the *Parr* case the United States, by quashing an indictment and instituting a new suit, chose one federal forum as against another. In the instant case the United States, by the devices enumerated above, attempts to transfer the litigation from a state to a federal court. In doing so it realigns the issues and substitutes for the original case a tailor-made suit which it prefers to defend. The blocking tactics employed by the United States present departures from appointed procedure more numerous and with far more serious effects than the practice which was noted with disapproval in the *Parr* case.

6. *Decisions of the Courts Below.* After a hearing on March 12, 1957, the Federal District Court delivered an oral opinion (R. 57-61) which it characterized as "Findings of Fact and Conclusions of Law." In this opinion the standing of the United States to sue was grounded upon an undefined relationship, set down in the amorphous terms of guardian and ward, between the Federal Government and Indians. For the law, reliance was placed largely on the *Sandoval* and the *Candelaria* cases.[6] The

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[5] 351 U.S. 513 (1956).

[6] *United States* v. *Sandoval*, 231 U.S. 28 (1913); *United States* v. *Candelaria*, 271 U.S. 432 (1926).

resulting order of the court stayed the proceedings in State-8016 until a judgment had been entered in Fed.-3407.

From this decision the Alonzos sought a review by the United States Court of Appeals for the Tenth Circuit. At this point the State of New Mexico moved to enter the litigation. Its Petition to Intervene was denied, but it was given permission to file a Brief Amicus Curiae. It insisted that a problem of state-federal relationship is involved; that the judgment of the Federal District Court is a violation of provisions of the Enabling Act by which the State had entered the Union; and that the stay constitutes a serious hazard to the system for the administration of justice which New Mexico has set up.

On September 5, 1957, oral argument was heard by the Circuit Court of Appeals for the Tenth Circuit. On September 25, 1957, the Court of Appeals affirmed the judgment of the court below. It is this judgment which this Court is now asked to review.

VI. REASONS FOR GRANTING THE WRIT

It is obvious that State-8016 and Fed.-3407 constitute a single venture into litigation. At this stage no question of the merits is involved. The sole concern here is the validity of the stay upon the proceeding in the state court, and upon this issue all questions now relevant converge.

1. The United States is not immune from the rule of comity when it appears not in its own interest but only in behalf of a third party.

The dominant issue here is whether the United States may transfer whatever immunity from the rule of comity it enjoys in its own right to a Pueblo

of Indians and to a business corporation which is the lessee of the Pueblo. Here is presented an important issue in federal-state relationships and in the operation of a dual system of courts. The question needs to be handled in a realistic manner—not in terms of the stereotypes and archaic dicta called into play in the forum below. The Court of Appeals has attempted to ground its decision upon the precedent of a case identical with the current suit. But the law reports are to be searched in vain for a precedent which is indistinguishable. In the absence of a case in point, the lower court has attempted to assemble fragments drawn from a number of opinions into a synthetic case shaped as authority for its decision. It has quoted from the *Sandoval* and *Candelaria* cases to establish the capacity of the United States to maintain its federal suit; it has used the *Leiter* case for the proposition that the immunity of the United States from the rule of comity is without bounds; and it has lifted language from the *Hellard* case[7] to the effect that the United States as protector of Indians has an interest as great as if it held the lands in controversy in fee. These larger pieces are supplemented by a number of others of lesser importance drawn from diverse sources. It will suffice here to subject the main fragments to critical analysis.

(a) *The Sandoval and Candelaria Cases.* The United States needed standing in order to institute Fed-3407 and move for the stay on State-8016. Such a standing is to be established only by a demonstration that the guardian-ward relationship now exists or by a showing that the lands involved are currently restricted against alienation. The court below has

[7] *United States* v. *Hellard*, 322 U.S. 363 (1944).

accepted the contention put forward by the Federal Government that the *Sandoval* and *Candelaria* cases furnish adequate authority for its capacity to maintain the suit.[8] This argument is supplemented by reliance upon Section 17 of the Pueblo Lands Act of 1924,[9] which, it is claimed, imposes a blanket restriction on all Pueblo lands.

The petitioners, however, do not admit that the United States is the guardian of the Pueblo Indians or that the lands in dispute here are restricted against alienation, and the Government has made no proper showing that either of these propositions is true.

The *Sandoval* and *Candelaria* cases are invoked as a recognition of some sort of a legal responsibility of the United States towards Indians. The *Sandoval* case involved the validity of a federal statute which prohibited the shipment of alcoholic beverages into Indian country, including the territory of the Pueblos. It presented no question of the relationship of the Federal Government to, or the responsibility upon it for, the welfare of the Indians. The language there set down concerned with this matter is pure dicta, quite irrelevant to the circumstances, the issues or the holdings of the case.

The *Candelaria* case went to the Supreme Court on two certified questions—a procedure not now favored for the resolution of substantive issues of law. These

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[8] There is language in these decisions, even though it be dicta, to the effect that the Pueblo Indians are wards of the Government and that the lands of the Pueblo Indians are restricted against alienation.

[9] Pueblo Lands Act, 43 Stat. 636 (June 7, 1924), 25 USCA § 331, Historical Note.

questions were accompanied by a statement submitted as a stipulation, which was not in accord with the evidence later presented at the trial. The Supreme Court lacks the facilities for fact finding, and the statements in its opinion about restrictions on land and the general obligations of the Federal Government to the Indians constitute a noble and gratuitous essay divorced from the matter at hand. It seems strange that this case has been so often cited and so rarely subjected to any critical analysis.

(b) *The Leiter Case.* The case of *Leiter Minerals, Inc.* v. *United States, supra,* did not involve Indians, but the procedural steps followed there are similar to those pursued in the instant controversy. However, in that case the United States itself owned the property in question, whereas in the instant case it makes no claim of ownership but relies entirely on its protective office in respect to Indians to establish, first, its right to sue and, second, its right to stay the proceedings in State-8016. In the *Leiter* case the original suit in the state court was a petitory action by which the petitioner sought to have itself declared owner of the mineral rights under land owned by the United States. The United States subsequently brought an action in the federal court to quiet title and sought a stay against the state court proceeding. In that case the injunction was granted, but only after the closest scrutiny with regard to its effect on the long-standing rule of comity. The decision to stay the state suit and let the federal suit go forward did not disturb the balance of advantage between the adverse parties. The plain implication is that the Supreme Court intended its decision to be applicable only in the circumstances of that particular case. The

attempt of the court below in the instant case to extend the doctrine to a wholly different situation is clearly an expedition into judicial law-making.

The attorney for the United States in the argument before the Federal District Court stated that he was content to rest his whole case on the *Leiter* decision. In the Government's brief prepared for the court below it was argued that the United States is completely immune from the rule of comity as a result of that holding. It is obvious, however, from an analysis of Mr. Justice Frankfurter's language in the *Leiter* case that it was not the intention of the Court to grant to the Federal Government such a sweeping immunity. His sensitive and alert realization of the difficult terrain to be traversed before such immunity can be recognized stands in sharp contrast to the bold and blind way in which the Court of Appeals has in this case plunged headlong into judicial legislation.

It is stated in the *Leiter* opinion that the right of the United States to a stay upon a state action is clear if, and only if, "the prerequisites for relief by way of injunction be present."[10] In the instant suit the court below did not even attempt to find these prerequisites, and in its brief the United States contended that they did not have to be met. In the *Leiter* case the United States demonstrated an interest of its own; in the instant case it relies upon a general, undefined and undemonstrated responsibility which it professes to have towards an Indian tribe.

Even after Mr. Justice Frankfurter adopted an interpretation excluding the United States from the coverage of 28 U.S.C. § 2283 in the *Leiter* case, he still

[10] 352 U.S. at 225.

deemed it necessary to decide "the question . . . whether the granting of an injunction was proper in the circumstances of this case."[11]

If, in accordance with the ordinary rules of construction, the holding in the *Leiter* case is to be read in terms of the circumstances which prompted it, the immunity granted to the United States is alike finite and concrete. It is limited to suits in which the United States has a material interest of its own and does not extend to cases in which it is in court in another capacity. The court below, however, following the lead of the respondent, insists that this immunity is absolute and without fixed bounds. It has held accordingly that the immunity applies to the United States when it is involved in litigation in behalf of a third party, and that the immunity may be transferred to an Indian Pueblo and even to a business corporation which has leased mineral rights from the Pueblo. There is nothing in the opinion of the Court in the *Leiter* case to warrant such a transfer of the immunity of the sovereign to alien parties.

In times like these, when the security of the nation is at stake, a decent respect for our system of justice—federal and state—is imperative. The Constitution itself has set down "domestic tranquillity" as a great objective of policy. The framers of that instrument granted to the "general government" powers only in those matters which lie beyond "the competence of the several states." There has been brought into our dual system of courts the harmonizing effect of the ancient rule of comity, without which the peaceful maintenance

[11] 352 U.S. at 226.

of law and order would be beset with difficulties. If the immunity of the Untied States to 28 U.S.C. § 2283 is absolute and unconfined and valid in any capacity in which it sues in behalf of itself or a third party, it becomes a grant of power without an imposition of responsibility. In this age when personal, corporate and public affairs are inextricably intertwined, there is a multiplex of capacities in which the Federal Government can claim to have an "interest" in individual and business controversies. If, on any plausible pretext, the United States may institute a federal and stay a state action, the administration of our dual system of justice will be subjected to a stress and strain it cannot bear. It would be dangerous to endow the Attorney General of the United States—an appointed official—with such a weapon for creating a judicial imperium. It is the very genuis of our law that a mandate is to be chiseled into concrete command. If the immunity of the United States is finite, its bounds should be set. If the immunity is free of all limitations, a cleancut declaration to that effect should come from the Court which has the ultimate power to declare the law.

(c) *The Hellard Case.* Even a cursory reading of *United States* v. *Hellard, supra,* will reveal its unlikeness to the current controversy. In that case the subject matter of the suit was allotted land, with restrictions imposed in specific terms by Act of Congress; in the instant case there has been no adequate showing that the lands in question are restricted. The state court action in the *Hellard* case was a partition proceeding, and the dominant issue in the federal court was the validity of an auction at which Indian lands were being disposed of. The function of the United States was to make certain

that the lands were not improvidently alienated. In the instant case the basic question is whether the Alonzos or the Pueblo of Laguna is, and from an undetermined date in the past has been, the lawful owner of a specified tract of the Paguate Purchase. No question of protection of Indians against their own improvidence in the alienation of land is involved. In the *Hellard* case there was no question of a stay on a state court proceeding. There the United States was challenging the validity of a judgment which had emerged after the state case had reached its conclusion. In the instant case a stay is sought before the state proceeding gets under way, for which neither the *Hellard* nor other cases offer any precedent.

The *Hellard* case is cited by the court below not for its holding, but for its language. A couple of sentences lifted out of context are employed to the end of bringing the instant case within the immunity of the United States as recognized in the *Leiter* decision. In the opinion of the Court in the *Hellard* case it is stated:

> "Restricted Indian land is property in which the United States has an interest. . . . The governmental interest throughout the partition proceedings is as clear as it would be if the fee were in the United States." 322 U.S. at 366.

The court below, in an exaggerated form, has adapted this language to the instant case. It has stated:

> "We are of the opinion that the Governmental interest in the instant action is as great as it would be if the fee to the lands involved were in the United States. Indeed, since the United States is suing as a guardian of a dependent nation in discharge of a fiduciary duty, its right and duty

> to protect the interests of its wards may be even greater than it would if it were suing in its own behalf with respect to its own lands."

As a legal maxim, there can be no dispute with this precept. A fiduciary office does impose a sacred trust; its obligations are at law even more binding upon a trustee than upon an owner of property. In the instant case, however, no fiduciary office in behalf of any party to this suit has been shown. If it exists, it extends to the Alonzos as fully as to the Pueblo of Laguna, and only by contagion to the Anaconda Company. An office can hardly be called fiduciary when its discharge is voluntary, not mandatory, in character.[12]

The court below confuses its argument by employing the word "interest" to describe two things distinct in character. It uses the word as a name for the equities in the land held by its owner in fee; it uses the same word to describe the duty, obligation or responsibility which devolves upon the United States in respect to Indians. But the interest of the owner and the obligation of the Federal Government are utterly unlike in kind, in substance and in action, and invite distinct roles in judicial procedure. The distinction between offices needs to be reflected in a distinction between words. But by whatever term the obligation of the United States—if any—is described, the language quoted is irrelevant to the issue of an order of a federal court staying an action in a state court.

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[12] See *Siniscal* v. *United States*, 208 F. 2d 406 (9th Cir. 1953), cert. den. 348 U.S. 818 (1954).

Thus, these three fragments, woven into a synthetic case, fall short of furnishing a precedent for the disposition made of the current controversy by the court below.

2. Although as the mover it has the burden of proof, the United States has failed to demonstrate its standing to enter the current litigation.

It is not clear what place, if any, the United States has in this litigation. The Pueblo of Laguna and the Anaconda Company are alike possessed of adequate resources and are here represented by counsel whose competence is not subject to question. The authority which the United States invokes for standing to sue is that of protector of an inferior people. In this role its obligation is in respect to Indians, not an Indian tribe. Its responsibility to the Alonzos is as great as to the Pueblo of Laguna. It lacks any sanction for preferring the Pueblo to the Alonzo family, or for extending its help to the stronger as against the weaker parties to the litigation. Its office of protector, if it has such an office, is an impartial one. As between an Indian family and a Pueblo of Indians, its duty is to insure a fair field and no favors. No obligation rests upon the United States to champion the interests of Anaconda in court. It is difficult to visualize a great corporation as in a "state of tutelage," unable to manage its own affairs and needing the protection of the Federal Government.

In the instant controversy the standing of the United States may be established by a showing that either there now exists a guardian-ward relationship between the United States and the parties defendant in the state action or that the lands which are the subject of the current litigation are lawfully restricted

against alienation. In the Federal District Court the standing of the United States was predicated upon an amorphous, undefined and unbounded relationship of guardian to ward. In the Court of Appeals this standing was grounded upon a sta. ment, unsupported by any direct testimony, ..at the lands in question are restricted against alienation.

(a) *The Relation of Guardian to Ward.* The guardian-ward relationship as applied to Indians is among the most amorphous concepts of the law. It is inexact, derives from an uncertain authority, is based upon no statutory enactment, has long been viewed with suspicion, and carries with it no concrete legal command. Its currency in the Tenth Circuit is in striking contrast with the critical attitude towards it by the leadng authority on Indian law[13] and to the caution which attends its use by the Court of Claims. In two cases the United States Court of Claims has recently held that:

> "Whether or not the legal relationship of guardian and ward exists between a particular Indian tribe and the United States depends . . . upon the express provisions of the particular treaty, agreement, executive order, or statute under which the claim presented arises."[14]

No treaty, agreement, executive order or statute recognizing such a relationship between the United States and the Pueblo of Laguna exists.

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[13] Felix S. Cohen, Handbook of Federal Indian Law, 1945 Edition, published by the Department of the Interior, pp. 169-173.

[14] *Gila River Pima-Maricopa Indian Community* v. *United States*, 140 F. Supp. 776, 780 (1956) and *Sioux Tribe of Indians* v. *United States*, 146 F. Supp. 229, 237 (1956).

In an answer to a complaint brought against it by the Pueblo of Laguna—the same Pueblo involved here—the Federal Government has stated that an ordinary guardian and ward relationship between the United States and the Pueblo of Laguna does not exist.[15] Yet in the proceedings below there has been reliance upon such a relationship as a basis for the standing of the United States. The unrestrained power of the United States to decide when it is and when it is not to act as guardian is out of accord with its avowal of a fiduciary relationship. In two cases in which the same parties are involved, the United States would seem to be estopped from serving its own advantage by invoking an outmoded concept in the one and disavowing it in the other.

(b) *Restriction on Alienation.* It is not strange, therefore, that the court below found it expedient to ground standing upon the added sanction of restriction on alienation. However, the only showing by the Federal Government of such a restriction consists of reference to the *Sandoval* and *Candelaria* cases and the citation of Section 17 of the Pueblo Lands Act. The *Sandoval* case was concerned with an exercise of the federal police power to keep firewater out of the hands of Indians. No issue in regard to equities in land or its federal regulation was involved.

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[15] *Pueblo of Laguna* v. *United States*, Indian Claims Commission, Case No. 227. In a similar suit involving the Pueblo of Cochiti, the United States in its answer specifically denies that "Such Indians have at all times been unfamiliar with the ways and language of the white man, ignorant and uneducated, and not in any way capable of protecting and asserting their own property rights." *Pueblo of Cochiti* v. *United States*, Indian Claims Commission, Case No. 136.

In the *Candelaria* case the opinion of the Supreme Court was given in advance of trial and not upon appeal—in answer to certified questions and not upon the review of a final judgment. Neither of the questions presented was concerned with restrictions on land. It was through this opinion that a rider to the Appropriations Act of 1851[16] was given currency. Section 7 of that Act extends "all the laws now in force, regulating trade and intercourse with the Indian tribes, or such provisions of the same as may be applicable" to the Territories of New Mexico and Utah. The laws to which reference is made are obviously those on the statute books, but the spokesman for the Supreme Court does not enumerate these laws and gives no consideration to those which are and those which are not applicable to the Territory of New Mexico. The dominant code of Indian law was at that time the Act of 1834,[17] and the conditions of Indian life which prompted it have now passed into oblivion. It is not promising to expect to find a restriction on land within so remote, so archaic and so vague a body of law.

It is significant that in the decades just before New Mexico was admitted to the Union such restraint as these ancient statutes may have imposed upon alienation seems to have been given no effect insofar as Pueblo lands were concerned. A number of private land claims affecting Pueblo Indians which came before the courts in that period went forward to judgment upon the assumption that their lands were not restricted.[18] In the *Conway* case it is stated that the

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[16] 9 Stat. 587 (1851).

[17] 4 Stat. 730 (1834).

[18] See, e.g., *United States* v. *Conway*, 175 U.S. 60 (1899) and *United States* v. *Baca*, 184 U.S. 653 (1902).

Act by which the land there in issue had been confirmed to certain Indian Pueblos

> "operated . . . to release to the Indians all the title of the United States to the land covered by it and passed the title of the United States as effectually as if it contained in terms a grant de novo."[19]

The lands involved in the current controversy were confirmed to the Pueblo of Laguna by Act of Congress of June 21, 1860,[20] in the same manner as the lands in the *Conway* case had been confirmed. By a Letter Patent dated September 22, 1884, the United States specifically entered a quit-claim in respect to any interest which it might have in these lands. The instrument stated in explicit terms that its issue "shall not affect the adverse rights of any person or persons whomsoever." In 1904 the Territorial Court of New Mexico, in *Territory* v. *Delinquent Taxpayers*,[21] held:

> "We conclude, therefore, that the Pueblo Indians of New Mexico are citizens of New Mexico and of the United States, hold their lands with full power of alienation, and are, as such, subject to taxation."

By the Act of March 3, 1905,[22] the Congress nullified that part of the holding which granted exemption from taxation but failed to impose any restriction on alienation. These holdings seem to put it beyond peradventure that the lands of the Pueblos were not

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[19] 175 U.S. at 67.

[20] 12 Stat. 71 (1860).

[21] 12 N.M. 139, 147, 76 P. 307, 309 (1904).

[22] 33 Stat. 1069 (1905).

restricted at the time the State of New Mexico was admitted to the Union.

(c) *The Enabling Act.* Section 2(2) of the New Mexico and Arizona Enabling Act[23] provided in part that the people of the state "do agree and declare that they forever disclaim all right and title" to lands "acquired through or from the United States or any prior sovereignty."[24] There was no disclaimer in respect to lands which had been acquired by purchase.[25] The reason for the distinction is clear. If lands are acquired from a sovereignty they may be subject to actual or potential restriction. If lands are aquired by purchase, the presumption is that they are free of such restriction. This Court has held:

> "Whenever, upon the admission of a State into the Union, Congress has intended to except out of it"—that is, the state—"an Indian reservation, or the sole and exclusive jurisdiction over that reservation, it has done so by express words."[26]

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[23] 36 Stat. 557, 558-559 (1910).

[24] The language of this provision, written into the Constitution of New Mexico, is in striking contrast to similar provisions in the Constitutions of Utah, North Dakota, South Dakota, Montana, Washington and Oklahoma. In the Enabling Acts and Constitutions of these states the states disclaim regulatory power over Indian lands however acquired and the disclaimer is not limited to lands "acquired through or from the United States or any prior sovereignty."

[25] The lands involved in this controversy were acquired, either by the Alonzos or the Pueblo of Laguna, by purchase from private individuals and not through or from the United States or any prior sovereignty.

[26] *United States* v. *McBratney,* 104 U.S. 621, 623-624 (1882).

If it had been the intent of the parties that the people of New Mexico disclaim all Indian lands however acquired, the Congress was able to say so.

In *Prince* v. *Trujillo*,[27] the Supreme Court of New Mexico, in a clear and unconfused interpretation of the language quoted above, stated:

> ". . . this provision did not in any wise fetter or limit the Indian if a resident of this state so far as to deny to him any right political or otherwise enjoyed by any other resident of this state. The only restriction was as to his title to land acquired by him by virtue of the laws of the United States or any prior sovereignty . . ."

In disregard of historical facts, the canons of construction and the authority cited, the spokesman for the court below has held, "the restrictions against alienation apply to lands acquired by the Pueblo through purchase, as well as to lands acquired by the Pueblo in any other manner." By this error in interpretation the court below fortifies the standing of the United States to sue.

(d) *The Pueblo Lands Act.* It is, however, argued by the court below that even if the lands in question were unrestricted at the time New Mexico became a state, the deficit was filled by Section 17 of the Pueblo Lands Act of 1924. The Enabling Act was bilateral in character. It took the form of a compact between the United States and the state seeking admission to the Union. It is an axiom of the law that an instrument bilateral in character cannot lawfully be amended by unilateral action. Moreover, the very Act by which New Mexico became a state recognizes

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[27] 42 N.M. 337, 78 P. 2d 145, 152 (1938).

the bilateral character of the compact then entered into. It requires that the people of New Mexico disclaim certain territory "by an ordinance irrevocable without the consent of the United States and the people of said States."[28] In place of this solemn and mutual understanding, the court below has substituted a dictum of its own to the effect that "such restrictions were clearly reimposed by Section 17 of the Act of 1924."

The very language of Section 17 defies the interpretation placed upon it by the court below. The purpose of the Act was to clear up the confusion existing at that time in respect to the lands of the Pueblos. Section 17 was added to guard against the improvident swearing away of their lands by Indians. The key word in the section is "hereafter", giving to the section a prospective and not a retrospective effect. To apply it to the instant case is to make its provisions retroactive. It was not intended to preclude the settlement of disputes between Indians concerning pre-acquired rights. There is nothing in the language employed or in its legislative history to indicate that in its passage the Congress had the slightest intent to legislate in respect to judicial proceedings designed to determine the ownership of lands. In the New Mexico of today it is everyday practice for Indians, as citizens of the United States, to buy and sell land without going through the complicated ritual set up in Section 17. It would be high irony if an Act, the purpose of which was to put an end to the confusion in Pueblo land titles, was to be interpreted in such a way as to compound that confusion.

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[28] 36 Stat. 558 (1910).

3. In a court of chancery the United States is not acting in accord with equity and good conscience when it chooses from among several available remedies the one which does greatest violence to the rights of other parties.

A court of equity is a court of conscience. A maxim alike ancient and universal is that the party who asks equity must do equity. The mandate to come into court with clean hands rests as squarely upon the Federal Government as upon a private litigant. As a representative of all the people and not a single interest, the Government is under an even greater obligation of fair play than is the ordinary suitor.

If the United States can establish its right to be a party to the case, at least three alternative moves are open to it: (1) It may formally attempt to enter State-8016 or furnish an attorney or attorneys to represent the Pueblo of Laguna therein; (2) it may await the outcome of the proceeding in the state court and take such action as then seems appropriate; or (3) it may, if it is valid for it to do so, initiate a federal action and seek to stay the case in the state court.

(a) *Entrance into State-8016.* The United States has contended that it is an indispensable party to State-8016, yet it cannot become a party to that action. Such a statement is merely self-serving and has no authoritative support. If this were true it would reveal an anomaly which has no place in a responsible legal system. That such an anomaly does not exist is attested by the ruling of this Court in *United States v. Bank of New York & Trust Company,*[29] where the Court says that if it goes into a state court "We cannot see that there would be impairment of any rights

[29] 296 U.S. 463 (1936).

the United States may possess, or any sacrifice of its proper dignity as a sovereign . . ."[30] A State of the Union possesses its own sovereignty, and in *Massachusetts* v. *Missouri*[31] this Court formally counseled the Commonwealth of Massachusetts to institute its case in the courts of the State it was suing.[32]

No interest of its own impels the United States to enter the current controversy. Its avowed role is that of protector of Indians. The obligation connected with that office applies as much to individuals as to Indian tribes—as much to the Alonzo family as to the Pueblo of Laguna. There appears to be no statutory sanction for an intrusion by the United States into a private controversy between Indians. The rationale of the protective office of the United States with respect to Indian affairs is that if an Indian interest is put in jeopardy it is the duty of the United States to assure an adequate defense. In instances in which an Indian or Indians are able to choose and to afford adequate legal talent, there would seem to be no call for intervention by the Federal Government, but if an Indian or Indians lack the resources to employ competent counsel the responsibility rests upon the United States to fill the void. Thus the Congress has found it necessary to go no further than to specify, in 25 U.S.C. § 175, that "In all States and Territories where there are

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[30] 296 U.S. at 480-481.

[31] 308 U.S. 1 (1939).

[32] It is evident, of course, that to enter the state court the United States would have to meet the prerequisites and that its motion to intervene would doubtless be challenged by the party adverse to that which it is seeking to aid.

reservations or allotted Indians the United States district attorney shall represent them in all suits at law and in equity." This legislative mandate applies to state as well as to federal courts. The protective office of the Federal Government is to be exercised whenever and wherever a hazard to Indian rights appears.

The practice of the United States has conformed to this mandate. In the *Candelaria* case, after this Court answered the certified questions put to it by the Circuit Court, the lower court held that because an attorney had been made available the United States was bound by the final judgment of the territorial court.[33] In *Martinez* v. *Martinez, supra,* the United States furnished a battery of ranking attorneys. There is no reason why the precedent thus set should not be followed here.

The contention that the United States cannot be sued without its consent has no relevancy in the current situation. It enters this controversy not to protect an interest of its own but to discharge a responsibility in behalf of a third party. It has no stake of its own in the outcome of the case, and consequently it is not being sued. As this Court has said in another connection but in language applicable here:

> "There is no merit in the suggestion that the United States, in presenting its claim in the state proceedings, would be compelled to take the position of a defendant—being sued without its consent. In intervening for the presentation of its claim, the United States would be an actor—

[33] *United States* v. *Candelaria,* 16 F. 2d 559 (1926).

voluntarily asserting what it deemed to be its rights—and not a defendant."[34]

In the instant suit the United States does not appear in a defensive role, and hence the court below was in error in quoting as applicable the statement in the *Leiter* case to the effect that "since the position of the United States is essentially a defensive one, we think that it should be permitted to choose the forum . . ."[35]

The United States contends that it may at its will enter or keep out of the state suit. If it enters, it will be bound; if it stays out, it claims that the resulting procedure would be a nullity.[36] Thus it argues that it may act arbitrarily in the discharge of a function which it insists is fiduciary in character, regardless of the impact upon proceeding or parties. An office of trust carries with it the powers necessary to its proper discharge. If here a fiduciary office exists, the Federal Government is clearly under a mandate to go into the state court. The claim of arbitrary power—and disclaimer of responsibility—for the United States is a vestige of the old royal prerogative, the abatement of which has given us one of the most glorious chapters in legal history. In a system of

[34] *United States* v. *Bank of New York & Trust Company*, 296 U.S. 463, 480 (1936).

[35] 352 U.S. at 228.

[36] In reality, if not in form, the United States is a party to the state action. State-8016 and Fed.-3407 constitute a single venture into litigation. The United States is attempting from the vantage point of plaintiff in Fed.-3407 to control the proceedings in State-8016. It is as clearly involved in the latter case as if it had there entered a formal appearance. The failure formally to appear attests its desire to dominate the state suit and yet to escape the responsibility which its formal presence would impose.

constitutional government, where all persons, whether as individuals or officials, have to "answer in another place" for their acts, such a claim of irresponsible authority has no place.

(b) *Right to Challenge State Court Judgment.* There is ample precedent for the United States waiting until the state proceeding has run its course, and then, if dissatisfied with the result, moving for modification or cancellation. In answer to one of the certified questions presented in the *Candelaria* case, this Court stated in effect that the United States would not be bound by the previous territorial court proceeding if it had not furnished an attorney there, and could therefore bring a subsequent suit. In the *Hellard* case it was held that under specified circumstances the United States might challenge the decree of a state court. Even in the *Inaba* case,[37] which comes closest to supplying a sanction for the writ here in question, the stay on the state proceedings ran only in favor of the United States and was not to affect the rights of other parties; the subject matter of the suit was not transferred from the state to the federal forum.

It is argued by the Federal Government that the United States cannot be forced to become a party to a state suit and that the ensuing decree would be void. It may be, in legalistic terms, that the United States is not "bound", but our dual system of courts can be administered only upon the hypothesis that the state and the federal courts are of equivalent standing. It cannot be presumed that the federal dispenses a better justice than the state courts. There

[37] *United States* v. *Inaba*, 291 Fed. 416 (D.C. Wash. 1923).

must be a presumption that the action of the state court will be carried through in the spirit of justice and fair play. Its decree at the very least would bind all parties to the controversy, save the United States; it would not be automatically void because of the absence of the United States as a party. The real question is the process by which the decree is to be voided. In practical against theoretical terms, if a fair trial has been had, it behooves the United States to withhold its hand. If, however, there is error in the conduct of the trial or in the result, the United States would then have an opportunity to challenge a provision in the decree, to move for an amendment, or to ask that the judgment be voided. In the great majority of suits there will be little or nothing for the United States to complain of. A felt need to set the mandate aside will be an exceptional, not the ordinary, thing.

It is argued that since the United States can act after the state proceeding is completed, the federal forum is the only one in which all the issues can be resolved. That proposition, exact as it was under the circumstances of the *Leiter* case, is untrue here. It is true in the instant case only if it be assumed that the judgment of the federal court will be in favor of the United States. The issues of possession, ejectment and damages raised in State-8016 can be fully adjudicated and a binding judgment entered only by the state court. In the federal court the Alonzos cannot counterclaim in respect to possession, title or damages, because there is no consent to sue the United States.[38] With this obstacle, the only judgment which the federal court can enter, if it decides against the

[38] *United States* v. *Shaw*, 309 U.S. 495 (1940).

United States, is a refusal to quiet title. Should the Government fail to sustain its allegations, the state suit would have to proceed in order to determine the right to possession and the amount of damages suffered by the Alonzos. There is the possibility of a second suit no matter where this case is originally tried. If it is tried in the federal court and the United States is unsuccessful, the Alonzos can secure relief only by going forward with their state court action; if it is tried in the state court and the Alonzos are successful, it is possible that the United States might seek to modify or set aside the judgment.

In a situation beset with such diverse possibilities, the tribunal before which the case was first instituted should be permitted to go forward and the other court should stay its hand. A judgment of a state court, if subject to attack can be more intelligently challenged after it has taken shape than before it is made. This procedure is not only logical, but is the one which has normally been followed. As is stated in *Martinez* v. *Martinez, supra:*

> "The United States may sue to cancel the old decree, as has been its procedure when not satisfied with decrees in such causes in which it was not a party, . . ."[39]

(c) *Substituting a Federal Suit.* In spite of these two remedies, alike adequate and fair, the United States has chosen a third course which confuses the litigation and does injury to litigants. It has instituted a federal suit and sought a stay upon the state action.

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[39] 49 N.M. at 97, 157 P. 2d at 493.

For the issue of the injunction staying State-8016 there is no statutory authority. It rests, if it exists at all, upon the general immunity of the United States to 28 U.S.C. § 2283, and, as the absence of citations demonstrates, there is no precedent for its employment in behalf of any third party. Its use has been limited to cases in which the suits in the state and the federal court involve identical or similar causes of action. There is no authority for the stay in an instance in which the cause of action is remade in such a way as to disturb the balance of advantage between the parties.

The intrusion of the United States into this case involves an encroachment upon the rights of the Alonzos as litigants and as citizens. It is an axiom of the law that the plaintiff has the right to try his own case—not one contrived for him by the defendant or an alien party. By entering this litigation and indirectly removing the case from a state to a federal court and transmuting it from a suit at law to a suit in equity the United States has swept away the right of the Alonzos to a jury trial. This right should not be denied or even abridged through an extraordinary writ whose employment is itself limited to the rarest of occasions. The action of the United States has also deferred the relief sought for an indefinite period, to be played upon by all the forces of judicial erosion. The United States has exhibited, and the court below has cited, no case in which a stay imposed upon a state proceeding by a federal court has involved such an invasion of the civil rights of the plaintiffs.

It may be that the United States is legally free to choose the remedy which is most advantageous to it, but the judiciary is not without power to exercise

pressure upon the Federal Government to do the decent thing. It can, by a refusal to sanction a stay upon the state proceeding, help to make the arbitrary path of the United States more difficult. Above all, the Court can avoid becoming an accessory to the inequitable practices of the United States in seeking to choose its own forum in disregard of the rights of other parties to the controversy. In a word, by granting or withholding the stay, the judiciary may enhance or diminish the advantage which the Government seeks in arbitrary and irresponsible action. The courts cannot afford to become a party to an inequitable procedure when an alternative remedy is immediately available. This venture into litigation has ceased to be a suit between private parties. It is now affected with a public interest. The call is for judgment in terms of the realities and in accordance with the fundamental principles of "equity and good conscience."

Is it equity and good conscience for the United States not only to choose the forum but also to remake the cause of action?

Is it equity and good conscience to tilt the balance of advantage in the litigation in favor of the Pueblo of Laguna and to the detriment of the Alonzos?

Is it equity and good conscience, when three alternative remedies are available to the United States for the protection of such interest or responsibility as it can demonstrate, for it to choose the one which rides roughshod over the rights of the Alonzos as citizens and as litigants?

Is it equity and good conscience for the United States to ground its standing in Fed.-3407 upon the

relationship of guardian to the Pueblo of Laguna as ward when in another case in which the Pueblo of Laguna is the plaintiff it insists that no ordinary relationship of guardian and ward exists between it and the Pueblo of Laguna?

Is it equity and good conscience to claim the tutelage of the Indians on the ground that they are a primitive and uncivilized people, unable to regulate their own affairs, when in another case involving an Indian Pueblo which in no material respect differs from that of the Pueblo of Laguna it disclaims every essential to a primitive and uncivilized state?[40]

These and like contrivances by means of which State-8016 has been tailored into Fed.-3407 go far beyond the activity which drew the reproof of four Justices in the case of *Parr* v. *United States, supra.* If there must be an unprecedented venture into judicial law-making, it should be touched off by a litigant who comes into chancery with clean hands.

CONCLUSION

WHEREFORE IN THE PREMISES your petitioners plead:

1. That the Writ of Certiorari here asked for be granted, directed to the United States Court of Appeals for the Tenth Circuit, and

2. That in summary judgment the decree of the court below be vacated and the case be remanded with instructions to dismiss the injunction staying the action in State-8016; or in the alternative, that a hear-

[40] See Pueblo of *Cochiti* v. *United States, supra.*

ing be granted at which this Court may conduct whatever other and additional inquiries it deems necessary to a just disposition of the instant case.

Respectfully submitted,

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December 23, 1957

APPENDIX A

Statutes Involved in the Current Controversy

The Rule of Comity, 28 U.S.C. § 2283

A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

Duty to Furnish Attorney 25 U.S.C. § 175

In all States and Territories where there are reservations or allotted Indians the United States district attorney shall represent them in all suits at law and in equity.

In re Restriction on Lands of Pueblos— Section 17 of Pueblo Lands Act of 1924, 25 U.S.C. § 331, Historical Note

No right, title, or interest in or to the lands of the Pueblo Indians of New Mexico to which their title has not been extinguished as hereinbefore determined shall hereafter be acquired or initiated by virtue of the laws of the State of New Mexico, or in any other manner except as may hereafter be provided by Congress, and no sale, grant, lease of any character, or other conveyance of lands, or any title or claim thereto, made by any pueblo as a community, or any Pueblo Indian living in a community of Pueblo Indians, in the State of New Mexico, shall be of any validity in law or in equity unless the same be first approved by the Secretary of the Interior.

The New Mexico Enabling Act, Section 2(2), 36 Stat. 557, 558-559, Identical With Article XXI, Section 2, New Mexico Constitution

That the people inhabiting said proposed State do agree and declare that they forever disclaim all right and title to unappropriated and ungranted public lands lying with the

boundaries thereof, and to all lands lying within said boundaries owned or held by any Indian or Indian tribes the right or title to which shall have been acquired through or from the United States or any prior sovereignty, and that until the title of such Indian or Indian tribes shall have been extinguished the same shall be and remain subject to the disposition and under the absolute jurisdiction and control of the Congress of the United States; . . .

The Pueblo a Juristic Person.
N. M. Stat. 1953, Sec. 51-17-1

The inhabitants within the state of New Mexico, known by the name of the Pueblo Indians, and living in towns or villages built on lands granted to such Indians by the laws of Spain and Mexico, and conceding to such inhabitants certain lands and privileges, to be used for the common benefit, are severally hereby created and constituted bodies politic and corporate, and shall be known in the law by the name of the Pueblo de ....., (naming it), and by that name they and their successors shall have perpetual succession, sue and be sued, plead and be impleaded, bring and defend in any court of law or equity, all such actions, pleas and matters whatsoever, proper to recover, protect, reclaim, demand or assert the right of such inhabitants, or any individual thereof, to any lands, tenements or hereditaments, possessed, occupied or claimed contrary to law, by any person whatsoever, and to bring and defend all such actions, and to resist any encroachment, claim or trespass made upon such lands, tenements or hereditaments, belonging to said inhabitants, or to any individual.

APPENDIX B

Opinion of the Court of Appeals for the Tenth Circuit Dated September 25, 1957

Before BRATTON, Chief Judge, and PHILLIPS and BREITENSTEIN, Circuit Judges.

PHILLIPS, Circuit Judge.

On January 25, 1957, Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia commenced an action in the District Court of the Second Judicial District in and for the County of Valencia, State of New Mexico, against John Herndon, Anaconda Copper Mining Company, a corporation, the Pueblo of Laguna[1] and Clemente Lente, as governor of the Pueblo and in his individual capacity, and against Willie Creager, Joe Ross, Joe Marmon and Lee Marmon, as members of the board of the Pueblo and in their individual capacities, seeking a writ of ejectment with respect to certain lands described in their complaint against the above-named defendants and damages for minerals alleged to have been wrongfully extracted from said lands by the above-named defendants. The state court action was numbered 8016 on the docket of the state court. Thereafter, on February 21, 1957, the United States, in its own behalf and in behalf of the Pueblo, commenced this action in the United States District Court for the District of New Mexico against the four Alonzos, James Garcia, John Herndon and the Anaconda Company (formerly Anaconda Copper Mining Company), a corporation, seeking a judgment quieting the title to certain of the lands embraced in the state court action and enjoining the plaintiffs in the state court action from prosecuting such action. From an order granting a preliminary injunction the Alonzos have appealed.

In its complaint the United States alleged that the title to certain of the lands embraced in the state court

[1] Hereinafter referred to as the Pueblo.

action was in the Pueblo, subject to restrictions against alienation, and that the title to certain other lands embraced in the state court action was in the United States.

Subsequent to the commencement of the instant action the plaintiffs in the state court action, by amendment eliminated from that action lands owned by the United States in fee simple and lands claimed by the United States to be held by it in trust for the Pueblo, so that the state court action involved only lands owned by the Pueblo in fee simple and alleged to be subject to restrictions against alienation by the United States.

In its complaint the United States alleged that the Pueblo is a nation or tribe of Indians, recognized by the Congress of the United States as a dependent Indian community; that it occupies lands owned by the Pueblo in fee simple, but subject to restrictions imposed by the Federal law against alienation without the consent of the United States.[2]

In its complaint the United States further alleged that prior to the Treaty of Guadalupe Hidalgo the Pueblo possessed a good and complete title to a tract of land located in the Territory of New Mexico known as the Paguate Grant or the Paguate Purchase; that the title of the Pueblo to the lands within the Paguate Purchase was confirmed by the Act of Congress of June 21, 1860, 12 Stat. 71, as Claim No. 30 on a list of claims recommended for confirmation by the Surveyor General, pursuant to the Act of Congress of July 22, 1854, 10 Stat. 308. That such title of the Pueblo to 75,406.27 acres of such lands was further confirmed by a patent, dated September 22, 1884, from the United States to the Pueblo.

[2] Because of the amendment in the state court action, reference to the allegations in the complaint in the instant action to lands owned by the United States for the use of the Pueblo and lands owned by the United States in fee simple will be omitted.

That by the Act of June 7, 1924, 43 Stat. 636, referred to as the Pueblo Lands Board Act, Congress created the Pueblo Lands Board and authorized it to investigate, determine and report "the lands within the exterior boundaries of any land granted or confirmed to the Pueblo Indians of New Mexico by any authority of the United States of America, or any prior sovereignty, or acquired by said Indians as a community by purchase or otherwise, title to which the said board shall find not to have been extinguished in accordance with the provisions of this Act, and the board shall not include in their report any claims of non-Indian claimants who, in the opinion of said board after investigation, hold and occupy such claims of which they have had adverse possession, in accordance with the provisions of section 4 of this Act."

That such Board investigated the claim of the Pueblo to the lands included in the Paguate Purchase and found there was a conflict between the Paguate Purchase and the Cubero Grant of 1833 as to a portion of the Paguate Purchase, as described in the patent of September 22, 1884, and further found that the title of the claimants to the Cubero Grant was superior to the claim of the Pueblo, as to the conflicting portion, and that such finding had the effect of extinguishing the claim of the Pueblo to such portion of the Paguate Purchase, amounting to 10,601.86 acres. That the Board further found there was a conflict between the Paguate Purchase and lands claimed by the owners of the Cebolleta Grant and certain private land claimants, and that the Board found that the claim of the Pueblo was superior to the title of such adverse claimants. That the Board further found there was a conflict between the Paguate Purchase and the lands claimed by the owners of the Baca Grant of 1769, and that the claim of the Pueblo was superior to the title of such adverse claimants. And that the Board determined that, except for the 10,601.86 acres found to be a part of the Cubero

Grant, the Pueblo had a superior title to all of the lands within the Paguate Purchase described in the patent.

That pursuant to #3 of the Pueblo Lands Board Act an action was instituted by the United States in the United States District Court for the District of New Mexico to quiet the title of the Pueblo to the lands involved in the conflicts between the Paguate Purchase and the Cebolleta and Baca Grants, entitled United States v. Armijo, et al., No. 2080.

That on July 20, 1931, upon stipulation of the parties a final decree was entered in No. 2080, which quieted the title against the United States and the Pueblo in favor of the owners of the Cebolleta Grant and 72 private claimants to 10,698.93 acres and quieted title in the Pueblo to 14,615.76 acres involved in the conflict.

That on November 7, 1931, a decree was entered in No. 2080, quieting the title against the United States and the Pueblo in favor of the claimants under the Baca Grant to 2,527.29 acres and quieting the title in the Pueblo to 3,853.63 acres involved in the conflict between the Paguate Purchase and the Baca Grant.

That the Pueblo is the owner, entitled to the exclusive possession of 51,578.19 acres of the original Paguate Purchase, being the area embraced in such purchase, less the 10,601.86 acres found by the Pueblo Lands Board to be a part of the Cubero Grant, 10,698.93 acres adjudged to the owners of the Cebolleta Grant and private claimants and 2,527.29 acres adjudged to the owners of the Baca Grant in No. 2080.[3]

That the Pueblo granted to the Anaconda Company a permit to prospect for uranium and other minerals associated therewith, covering the lands owned by the Pueblo in the Paguate Purchase. That such permit was dated

[3] The complaint sets out a particular description of such 51,578.19 acres of the lands excluded from the Paguate Purchase.

October 18, 1951, and was approved by the Department of Interior on November 8, 1951.

That the Pueblo, on March 27, 1952, granted to the Anaconda Company a mining lease for the extraction of uranium and other minerals associated therewith from 799.09 acres of lands embraced in the Paguate Purchase,[4] that such lease was approved by the Department of Interior on May 7, 1952, and remains in full force and effect.

That prior to the treaty of Guadalupe Hidalgo and at all times since, the Pueblo had been and now is the owner in fee simple, subject to the restrictions on alienability imposed by the United States, of such 51,578.19 acres of the original Paguate Purchase and that during all of such time the Pueblo has been and now is in open, notorious, actual, exclusive, continuous and adverse possession of such lands. That the Alonzos and Garcia are claiming some individual right, title, or interest apart from their rights as members of the Pueblo in such 51,578.19 acres of land, adverse to the Pueblo, which constitutes a cloud upon the title of the Pueblo.

That the Pueblo is the owner of 2,174.332 acres of land acquired by purchase from the Board of Trustees of the Cebolleta Grant, which were conveyed to it by deed from such Board of Trustee to the Pueblo, dated April 16, 1937. That such lands so purchased are a portion of the lands awarded to the Board of Trustees of the Cebolleta Grant by the judgment of July 20, 1931.

That the Pueblo is the owner of 2,519.028 acres acquired by purchase from Cruz Baca and Tiburcia Baca, his wife, which were conveyed by the Bacas to the Pueblo by deed dated December 9, 1936. That the last-mentioned lands are the identical lands awarded to the claimants under the Baca Grant by the judgment of November 7, 1931.

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[4] Such lands were particularly described in the complaint and were part of the lands, title to which was quieted in the Pueblo by judgment entered in No. 2080 Equity.

That the Pueblo is the owner of 480 acres of land acquired by purchase from the Bacas, which were conveyed to the Pueblo by the Bacas by deed dated July 31, 1939. That the lands last-mentioned are not within the Paguate Purchase, but adjoin it on the north.

That the Pueblo is the owner and entitled to the exclusive possession of all the lands referred to in the last three preceding paragraphs. That the Alonzos and Garcia are claiming some individual right, title, or interest, apart from their rights as members of the Pueblo, in such lands, adverse to the Pueblo, which constitutes a cloud upon the title of the Pueblo to such lands.

That the Pueblo, prior to the Treaty of Guadalupe Hidalgo, had a good and complete title to lands now in the State of New Mexico, known as the El Rito, San Juan and Gigante Ranchos; that such Ranchos included, among others, lands situated in Township 10 North, Range 4 West, N.M.P.M. and Township 10 North, Range 5 West N.M.P.M.[5] That the title of the Pueblo to the Ranchos lands was confirmed by Act of Congress of June 21, 1860, 12 Stat. 71, by patent dated September 22, 1884, from the United States to the Pueblo, and by the report of the Pueblo Lands Board made pursuant to the Act of June 7, 1924; that the Pueblo is the owner and entitled to the exclusive possession of such lands and beginning prior to the Treaty of Guadalupe Hidalgo and at all times since has been in the open, notorious, actual, exclusive, continuous and adverse possession of such lands; that the Alonzos and Garcia are claiming some individual right, title, or interest, apart from their rights as members of the Pueblo, in such lands, adverse to the Pueblo, which constitutes a cloud upon the title of the Pueblo.

As grounds for injunctive relief the United States alleged the commencement and pendency of the state court

[5] Such lands are particularly described in the complaint.

action, No. 8016, and the relief sought in such action; that the purpose and effect of such state court action is to challenge the title and possesion of the United States and the Pueblo to the 51,578.19 acres of the original Paguate Purchase and the lands acquired by purchase by the Pueblo, as above set out.

That in such state court action, No. 8016, the plaintiffs therein seek to oust the United States and the Pueblo from such lands to which the Pueblo has title and possession under the guardianship of the United States; that the United States is not and cannot be made a party to the state court action, No. 8016; that in the instant action the United States has brought before the court all of the interested parties, so that all conflicting claims may be litigated in one action; that a judgment entered in the instant action will be binding upon the Pueblo and all other parties named as defendants in such action; that the state court action, No. 8016, constitutes a threat against and interference with the substantial right of the Pueblo, as a ward of the United States, and the mineral lessee, and that the United States does not have an adequate remedy at law.

That the Anaconda Company discovered a very valuable deposit of uranium-bearing ore in the lands covered by the lease, has proceeded under such lease to develop a mine, known as the Jackpile Mine, from which large amounts of uranium-bearing ore are being removed, and that under the lease the Pueblos have received from the Anaconda Company royalties of approximately $2,900,000.

In United States v. Sandoval, 231 U. S. 28, 47, the court said:

> "As before indicated, by an uniform course of action beginning as early as 1854 and continued up to the present time. the legislative and executive branches of the Government have regarded and treated the Pueblos of New Mexico as dependent communities

> entitled to its aid and protection, like other Indian tribes, and, considering their Indian lineage, isolated and communal life, primitive customs and limited civilization, this assertion of guardianship over them cannot be said to be arbitrary but must be regarded as both authorized and controlling. * * *"[6]

Under the Spanish law and the laws of Mexico the Pueblo Indians in New Mexico, although having full title to their lands, were regarded as in a state of tutelage and under a special national guardianship and they could alienate their land only under governmental supervision and with the approval of designated authorities.[7]

While the "Indians of each pueblo" in New Mexico, "collectively as a community, have a fee simple title to the lands of the pueblo * * * their lands, like the tribal lands of other Indians owned in fee under patents from the United States, are 'subject to the legislation of Congress enacted in the exercise of the Government's guardianship' over Indian tribes and their property."[8]

Two significant manifestations of the purpose of Congress to subject the Pueblo Indians and their lands to such legislation occurred after the decision in United States v. Joseph, 94 U.S. 614, namely: a decision of the Territorial Court of New Mexico in 1904, holding that Pueblo lands were taxable, Territory v. Persons, Etc., in Delinquent Tax List, 12 N. M. 139, 76 P. 307, "was promptly followed by a congressional enactment annulling the taxes already levied and forbidding further levies," 33 Stat. 1069; and a decision of the Territorial Court, United States v. Mares, et al., 14 N. M. 1, 88 P. 1128, "construing the statute which prohibits the sale of liquor to Indians and its introduction into the Indian country as not

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[6] See also United States v. Candelaria, 271 U.S. 432, 439, 440.

[7] United States v. Candelaria, 271 U. S. 432, 443.

[8] United States v. Candelaria, 271 U. S. 432, 440.

including" the Pueblo Indians or their lands "was shortly followed by an enactment" by Congress "declaring that the statute should be construed as including both," 36 Stat. 580.

Section 12 of the Act of June 30, 1834, 4 Stat. 723, 730 provided:

> "That no purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the constitution. * * *"

The provisions of the last-mentioned statute, "with others 'regulating trade and intercourse with the Indian tribes' was extended over 'the Indian tribes' of New Mexico" by the Act of February 27, 1851, 9 Stat. 574, 586.

In holding that the phrase "Indian tribes" as used in the last two statutes before mentioned included the Pueblo Indians, the court in United States v. Candelaria, 271 U. S. 432, 441 said:

> "While there is no express reference in the provision to Pueblo Indians, we think it must be taken as including them. They are plainly within its spirit and, in our opinion, fairly within its words, 'any tribe of Indians.' Although sedentary, industrious and disposed to peace, they are Indians in race, customs and domestic government, always have lived in isolated communities, and are a simple, uninformed people, ill-prepared to cope with the intelligence and greed of other races. It therefore is difficult to believe that Congress in 1851 was not intending to protect them, but only the nomadic and savage Indians then living in New Mexico. A more reasonable view is that the term 'Indian tribe' was used in the acts of 1834 and 1851 in the sense of 'a body of Indians of the same or a similar race, united in a community under one leadership or government, and inhabiting a particular though sometimes ill-defined territory.'"

The court further held in the Candelaria case that Congress had imposed a restriction on the alienation of the lands of the Pueblo Indians, to which the Pueblos had full title, as a continuation of a policy which the governments of Spain and Mexico "had deemed essential to the protection of such Indians."[9]

Finally, the court in the Candelaria case held that the Pueblo Indians "are wards of the United States and hold their lands subject to the restriction that the same cannot be alienated in any-wise without its consent. * * *"; that a transfer of the lands of a New Mexico Pueblo "contrary to the inhibition of Congress would be a violation of the governmental rights of the United States arising from its obligation to a dependant people"; that "no stipulations, contracts, or judgments rendered in suits to which the Government is a stranger can affect its interest"; and that "The authority of the United States to enforce the restraint lawfully created cannot be impaired by any action without its consent."[10]

Moreover, §17 of the Act of June 7, 1924, 43 Stat. 636, 641 provided:

> "No right, title, or interest in or to the lands of the Pueblo Indians of New Mexico to which their title has not been extinguished as hereinbefore determined shall hereafter be acquired or initiated by virtue of the laws of the State of New Mexico, or in any other manner except as may hereafter be provided by Congress, and no sale, grant, lease of any character, or other conveyance of lands, or any title or claim thereto, made by any pueblo as a community, or any Pueblo Indian living in a community of Pueblo Indians, in the State of New Mexico, shall be of any validity in law or in equity unless the same be first approved by the Secretary of the Interior."

[9] United States v. Candelaria, 271 U. S. 432, 440, 442.

[10] United States v. Candelaria, 271 U. S. 432, 442, 444.

That provision insured that the restrictions implicit in the decision in United States v. Sandoval, 231 U. S. 28, 48, would continue in force as to lands, title to which was found to be in the Pueblos.

Counsel for the Alonzos, while impliedly conceding that the lands of the Pueblo generally have at all times been subject to restrictions against alienation, without the consent of the United States, make the narrow contention that lands acquired by the Pueblo by purchase and to which they hold the fee simple title are not subject to restrictions against alienation. They predicate their contention in part on language found in §2 of the New Mexico, Arizona Enabling Act, 36 Stat. 557, 558, 559, reading as follows:

> "That the people inhabiting said proposed State do agree and declare that they forever disclaim all right and title to * * * all lands lying within said boundaries owned or held by any Indian or Indian tribes the right or title to which shall have been *acquired through or from the United States or any prior sovereignty*, and that until the title of such Indian or Indian tribes shall have been extinguished the same shall be and remain subject to the disposition and under the absolute jurisdiction and control of the Congress of the United States; * * *." (Italics ours.)

It will be observed, however, that the language of the Act of June 30, 1834, imposes restrictions against the purchase, grant, lease, or other conveyance of lands or of any title or claim thereto from any Indian nation or tribe of Indians, and that the word "lands" is in nowise limited by any express or implied language in the Act.

The legislative history of the Enabling Act shows that the purpose of §2, above quoted, was to preclude any possible challenge by the state of titles acquired by Indians through grants made by the Governments of Spain or Mexico. We think it clear there was no intent to limit the provisions of the Act of June 30, 1834.

Moreover, the reason for the imposition of the restrictions is in nowise related to the manner in which the Indians acquired their lands. The purpose of restrictions is to protect the Indians, "a simple, uninformed people, ill-prepared to cope with the intelligence and greed of other races'"[11] against the loss of their lands by improvident disposition or through overreaching by members of other races. There is as great a need for such protection of the Pueblos in New Mexico, with respect to their lands acquired by purchase, as there is to lands otherwise acquired.

Furthermore, the 51,578.19 acres of land of the original Paguate Purchase and the Ranchos lands were acquired by the Pueblo prior to the Treaty of Guadalupe Hidalgo and were owned and possessed by it at the time of the passage of the Act of June 7, 1924. Section 17 of that Act, quoted above, insured that the restrictions which Congress recognized as theretofore existing, with respect to lands owned and possessed by the New Mexico Pueblos, as a community, should continue, except in cases where the Pueblos' title had been extinguished, as provided for in such Act.

Finally, United States v. Candelaria, 271 U. S. 432, was an action brought by the United States as guardian of the Pueblo of Laguna to quiet the title to the lands embraced in the Paguate Purchase and in that case the court held that such lands were subject to restrictions against alienation without the consent of the United States.

We are of the opinion that the restrictions against alienation apply to lands acquired by the Pueblo through purchase, as well as to lands acquired by the Pueblo in any other manner.

But if we be wrong in our conclusion, which we do not concede, that the Enabling Act did not by implication re-

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[11] United States v. Candelaria, 271 U. S. 432, 442.

move restrictions with respect to lands acquired by the Pueblos by purchase, such restrictions were clearly reimposed by §17 of the Act of 1924, which clearly applies without qualification to all lands of the Pueblo Indians of New Mexico. The power of Congress to reimpose restrictions while the Pueblos were still wards of the Nation is not open to question.[12]

With respect to the right of the United States to injunctive relief, we think the decision of the United States in Leiter Minerals, Inc. v. United States, 352 U. S. 120, is controlling. Leiter brought an action in a Louisiana state court against certain mineral lessees of the United States. Leiter was out of possession, but claimed title to and sought to have itself declared owner of the mineral rights under land owned by the United States and also sought an accounting for oil and other minerals removed by such lessees under their lease from the United States. Leiter founded its claim on Louisiana Act No. 315 of 1940, La. Rev. Stat. 1950, 9:5806, which, it alleged, made "imprescriptible" a reservation of mineral rights in a deed of December 21, 1938, to the United States by its predecessor in title. After the commencement of the state court action the United States filed an independent action to quiet its title to the mineral rights, naming all the parties to the state court action as defendants, and sought a preliminary and permanent injunction to restrain the defendants from further prosecution of the state court action. The Federal District Court issued a preliminary injunction. On appeal, the United States Court of Appeals for the Fifth Circuit affirmed the order granting the preliminary injunction.[13] The Supreme Court granted certiorari and affirmed the judgment of the Court of Appeals. In its decision the Supreme Court held that the United

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[12] Brader v. James, 246 U. S. 88, 96; McCurdy v. United States, 246 U. S. 263, 273.

[13] Leiter Minerals, Inc. v. United States, 5 Cir., 224 F. 2d 381.

States was not precluded from seeking injunctive relief by the provisions of 28 USC §2283, and that injunctive relief, under the circumstances, was proper.

Counsel for the Alonzos seek to distinguish the Leiter case by reason of the fact that there the Government was the owner of the lands in fee simple and in the instant case the fee simple title to the lands involved is in the Pueblo and the Government is suing to vindicate the title of the Pueblo. But restricted Indian land is property in which the United States has an interest. In United States v. Hellard, 322 U. S. 363, the question was presented as to whether full-blood Indians of the Five Civilized Tribes could be divested of title to restricted land by a sale pursuant to a judgment of a state court in a partition proceeding to which the United States was not a party. In holding that the United States was not bound by the judgment in the state court action to which it was not a party, the court in its opinion said:

> "Restricted Indian land is property in which the United States has an interest. '*This national interest is not to be expressed in terms of property, or to be limited to the assertion of rights incident to the ownership of a reversion or to the holding of a technical title in trust.*' Heckman v. United States, 224 U. S. 413, 437. Though the Indian's interest is alienated by judicial decree, the United States may sue to cancel the judgment and set the conveyance aside where it was not a party to the action. Bowling & Miami Investment Co. v. United States, 233 U. S. 528; Privett v. United States, 266 U. S. 201; Sunderland v. United States, 266 U. S. 226. Under §2 of the Act of June 14, 1918 lands partitioned in kind to full-bloods remain restricted. Only if the land is sold at partition sale are the restrictions removed. The governmental interest throughout the partition proceedings *is as clear as it would be if the fee were in the United States.* Minnesota v. United States, 305 U. S. 382, 387-388; Town of Okemah v. United States, 140 F. 2d 963. * * * " (Italics ours.)

We are of the opinion that the Governmental interest in the instant action is as great as it would be if the fee to the lands involved were in the United States. Indeed, since the United States is suing as a guardian of a dependent nation in discharge of a fiduciary duty, its right and duty to protect the interests of its wards may be even greater than it would if it were suing in its own behalf with respect to its own lands.

Counsel for the Alonzos further contend that the United States could have appeared in the state court action and that it was its duty so to do, but in the Leiter case the Supreme Court said:

> "* * * In this case, a private party is seeking by a state proceeding to obtain property currently in the hands of persons holding under the United States; the United States is seeking to protect that possession and quiet title by a federal court proceeding. Therefore, since the position of the United States is essentially a defensive one, *we think that it should be permitted to choose the forum in this case*, even though the state litigation has the elements of an action characterized as quasi in rem. * * *" (Italics ours.)

Accordingly, we conclude that the United States is entitled to injunctive relief.

Affirmed.

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In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 682

LUPE ALONZO, JIM ALONZO, JOE ALONZO and VALENTINO ALONZO, PETITIONERS

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The District Court did not write an opinion. The opinion of the Court of Appeals (Pet. App. 3-17) is reported at 249 F.2d 189.

JURISDICTION

The judgment of the Court of Appeals was entered on September 25, 1957. The petition for a writ of certiorari was filed on December 23, 1957. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the United States has authority to institute this quiet title action in a United States District Court on behalf of the Pueblo of Laguna, an Indian tribe in New Mexico.

2. Whether the District Court properly enjoined, *pendente lite*, prosecution of a state court proceeding which sought to oust the Indian Pueblo and its lessee from possession of the land in dispute.

STATUTES INVOLVED

Section 12 of the Act of June 30, 1834, 4 Stat. 729, 730, 25 U.S.C. 177, provides:

> No purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution. * * *

Section 17 of the Pueblo Lands Board Act of June 7, 1924, 43 Stat. 636, 641, provides:

> No right, title, or interest in or to the lands of the Pueblo Indians of New Mexico to which their title has not been extinguished as hereinbefore determined shall hereafter be acquired or initiated by virtue of the laws of the State of New Mexico, or in any other manner except as may hereafter be provided by Congress, and no sale, grant, lease of any character, or other conveyance of lands, or any title or claim thereto, made by any pueblo as a community, or any Pueblo Indian living in a community of Pueblo

Indians, in the State of New Mexico, shall be of any validity in law or in equity unless the same be first approved by the Secretary of the Interior.

28 U. S. C. 2283 provides:

> A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

STATEMENT

The facts of this case, which concerns a preliminary injunction restraining prosecution of a state court action instituted by petitioners, are stated in some detail in the opinion of the Court of Appeals (Pet. App. 3-9). They may be briefly summarized as follows:

The complaint of the United States in the District Court alleges that the Pueblo of Laguna is an Indian Nation which owned a tract of land known as the Paguate Purchase, prior to the Treaty of Guadalupe Hidalgo in 1848; title to this land was confirmed in the Pueblo by Act of Congress in 1860 and a patent executed in 1884; by an Act of 1924, Congress Created the Pueblo Lands Board which resolved various conflicts between the claims of the Pueblo under the Paguate Grant and other claimants; pursuant to the 1924 Act, suit was brought in the New Mexico federal District Court resulting in a decree resolving the conflicts by quieting title in the Pueblo to 51,578.19 acres and in other claimants to described acreages;

subsequently, the Pueblo bought some of those other lands in 1936, 1937 and 1939. In 1951 and 1952, almost 800 acres of the lands within the 51,000 acre area were, with the approval of the Department of the Interior, leased by the Pueblo to The Anaconda Company for uranium mining purposes; an ore processing plant has been established under contract with the Atomic Energy Commission; and royalties of some $2,900,000 have been paid to the Pueblo.

In January 1957 petitioners, claiming those lands, filed a suit in ejectment in a New Mexico state court (a suit known as State-8016), seeking to recover possession and damages from the Pueblo, its officials, and from Anaconda.

About a month later, the present suit was filed by the United States in the federal District Court against petitioners and Anaconda. In addition to the allegations outlined above, the complaint also asserted that the Pueblo was a dependent Indian community and that its lands owned in fee are subject to restrictions upon alienation without the consent of the United States. As to the 51,000 acres and the three tracts purchased by the Pueblo, the complaint asserted that the Pueblo has fee title and that the claims of the defendants *i.e.*, the petitioners in this Court, constitute a cloud thereon.

In connection with its request for an injunction against prosecution of the state court action, the complaint alleged that the defendants seek to oust the Pueblo from lands to which it has title and possession under the guardianship of the United States; that the Government cannot be made a party to State-

8016; and that all interested parties are before the federal court and will be bound by that court's decree. In support of the motion for a preliminary injunction, there was introduced a copy of the court decree entered pursuant to the 1924 Act and also an affidavit of the Acting Director for Domestic Procurement of the Atomic Energy Commission describing the activities of Anaconda and the importance of the uninterrupted continuance of production to the Commission's program and the national defense.

The District Court announced its decision to issue a preliminary injunction in the following terms (R. 61):

> I don't care whether it is Guardianship, a Ward, Trustee, a *cestui que* trust, or the Protector, over these Tribes, the United States of America, I think, has sufficient interest to maintain the suit and secure this Injunction. I will resist the allure offered by Mr. Ortega [of counsel for petitioners], of emancipating, as he says, the Laguna Pueblo. They haven't asked me to. I doubt if I could, I don't think they would want to pay $31,000,000 [1] to be emancipated, either, right now. We will leave it up to our friends in Congress.

The Court of Appeals affirmed the grant of the injunction (Pet. App. 3a-17a).

ARGUMENT

There is presented at this time only the limited issue raised by the issuance of the preliminary in-

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[1] This is the amount of damages claimed in State-8016.

junction against the prosecution of the state court action. Though variously phrased, petitioners' contentions are mainly bottomed on the single proposition that the United States has no standing or right to institute this action.[2] The federal District Court has, of course, jurisdiction (in the strictest sense) of every case instituted by the United States, 28 U.S.C. 1345. Accordingly, petitioners can prevail only by showing that, although the court has jurisdiction, the allegations of the complaint as to the interest of the United States cannot possibly be sustained and must be rejected on their face.

1. (*a*). The standing of the United States to quiet title in the Pueblo of Laguna to land included in the Paguate purchase or grant is established by *United States* v. *Candelaria*, 271 U.S. 432, 16 F. 2d 559. This Court there discussed at length the history of the New Mexico Pueblos as well as the earlier decisions, especially *United States* v. *Sandoval*, 231 U.S. 28, and concluded (271 U.S. at 443-444):

> The Indians of the pueblo are wards of the United States and hold their lands subject to the restriction that the same cannot be alienated in any-wise without its consent. A judgment or decree which operates directly or indirectly to

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[2] Thus, petitioners say that in State-8016 "No federal question was involved" (Pet. 5), that "no item in the complaint invited a controversy with the Federal Government" (Pet. 5-6), that the action "did not involve federal lands" (Pet. 6). Elsewhere, they say "It is not clear what place, if any, the United States has in this litigation" (Pet. 18), and that this is a "private controversy between Indians" (Pet. 27).

> transfer the lands from the Indians, where the United States has not authorized or appeared in the suit, infringes that restriction. The United States has an interest in maintaining and enforcing the restriction which cannot be affected by such a judgment or decree.

The Court summarized the meaning of its earlier *Sandoval* decision as follows (p. 440):

> While we recognized in that case that the Indians of each pueblo, collectively as a community, have a fee simple title to the lands of the pueblo (other than such as are occupied under executive orders), we held that their lands, like the tribal lands of other Indians owned in fee under patents from the United States, are "subject to the legislation of Congress enacted in the exercise of the Government's guardianship" over Indian tribes and their property.

As the Court of Appeals held (Pet. App. 11-12), the Pueblo lands are restricted against alienation without the consent of the United States both by virtue of the terms of the Act of June 30, 1834, applicable to "any Indian nation or tribe of Indians", and by the express provision of Section 17 of the Act of June 7, 1924, which, *inter alia*, created the Pueblo Lands Board (see *supra*, pp. 2-3).

(*b*). Petitioners attempt in several ways to answer these established doctrines and plain statutory provisions. First, they seek in effect, without explicitly saying so, to overrule the *Candelaria* and *Sandoval* cases; but the rule of these decisions is too well-settled in Indian law to be overturned at this late date. Petitioners likewise would delete from the 1924 Act

(*supra*, pp. 2-3) the explicit provision that no conveyance of any title, etc. "shall be of any validity in law or in equity unless the same be first approved by the Secretary of the Interior", by resort to the argument that the New Mexico Enabling Act of 1910 placed the lands in suit forever beyond the authority of the Federal Government. But the opinion of the Tenth Circuit below (Pet. App. 13a-15a) shows that —particularly in the light of the earlier 1834 Act (*supra*, p. 2)—the New Mexico Enabling Act did not treat these Indian lands differently from other Indian lands, and that if the 1910 Enabling Act did purport to do so the subsequent 1924 Act validly reasserted the power of the United States.[3] The District Court correctly epitomized this case in saying that whether the Pueblo should be emancipated is a question to be left to Congress.

Petitioners' other arguments are equally unavailing. They cite (Pet. 21-22) *United States* v. *Conway*, 175 U.S. 60 and *United States* v. *Baca*, 184

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[3] These are issues peculiar to New Mexico, and they have been decided adversely to petitioners by the District Court for that state, and by a division of the Tenth Circuit which included two circuit judges from that state.

The brief for the State of New Mexico as *amicus curiae* confuses questions of jurisdiction of particular lands for purposes such as criminal laws, taxation, etc. with the question of restrictions against alienation of Indian lands. The power to impose such restrictions arises out of the special relationship between the United States and the Indians and does not rest on exclusive federal territorial jurisdiction. Thus, the discussion by the State of New Mexico (pp. 6-8) of cessions of exclusive jurisdiction has nothing to do with the present case.

U.S. 653, but these were proceedings in the Court of Private Land Claims relating to fee title and posed no issue as to whether title of a Pueblo would be restricted against alienation. So also, there is no inconsistency, as claimed in the petition, with cases before the Indian Claims Commission (Pet. 19-20). There is a vast difference between "the power and the duty of exercising a fostering care and protection over all dependent Indian communities" (*United States* v. *Sandoval*, 231 U.S. 28, 46), the basis of the present case, and the existence of a technical guardian-and-ward relationship such as to render the United States liable to the tribes by application of guardianship law, which was the subject of the Indian Claims Commission cases cited by petitioners. This is made perfectly clear in *Sioux Tribe of Indians* v. *United States*, 146 F. Supp. 229 (Ct. Cls.), where the Court of Claims said (p. 237): "While it has often been said by this court and the Supreme Court that the general relationship of the Government to the Indians of the United States is *similar* [emphasis by the court] to that of a guardian and ward, it has never been held that such a general relationship amounts to a legal guardian-ward relationship in the absence of some specific language to that effect in a treaty, agreement, or Act of Congress."

2. Once the authority of the United States to enforce by quiet title proceedings the rights of the Pueblo is established, the propriety of the injunction is governed by *Leiter Minerals, Inc.*, v. *United States*, 352 U.S. 220. Petitioners seek to put that decision aside because it involved property claimed

by the United States (Pet. 12-15). But the government interest in land the fee title to which is vested in Indians is as clear as if the fee were in the United States. *United States* v. *Hellard*, 322 U.S. 363, and cases there cited (Pet. App. 16). As the Court of Appeals declared (Pet. App. 17), "Indeed, since the United States is suing as a guardian of a dependent nation in discharge of a fiduciary duty, its right and duty to protect the interests of its wards may be even greater than it would if it were suing in its own behalf with respect to its own lands."

As in the *Leiter* case, any judgment rendered by the state court could not bind the United States. *United States* v. *Candelaria*, 271 U.S. 432; *Choctaw and Chickasaw Nations* v. *Seitz*, 193 F.2d 456 (C.A. 10). Only the federal case will finally determine the basic issue. Thus, the same factors justifying issuance of an injunction in *Leiter* are present here. In fact, the instant case is a stronger one than *Leiter* since there is no issue which in any way depends on state law. The petitioners' claim to title rests on events long prior to statehood—they allege rights fixed "by transactions antedating the Treaty of Guadalupe Hidalgo by almost a century" (Pet. 6). Other federal issues are the effect of the Pueblo Land Board decision and the earlier decree of the federal District Court (*supra*, pp. 3-4). A further reason why adjudication of this case by the federal court is called for is the very fact that restricted Indian lands are involved. "The judicial determination of controversies concerning such lands has been commonly committed

exclusively to federal courts." *Minnesota* v. *United States*, 305 U.S. 382, 389.

These considerations, as well as the *Leiter* decision itself, are the answer to petitioners' discussion of comity (Pet. 7, 10), as well as their charge that here the United States is "shopping around" for a favorable forum (Pet. 8, 35). The fact is that institution of suit in the federal court was in accord with consistent policy, especially because of the expertness of the federal courts, including the Court of Appeals for the Tenth Circuit, in this specialized field of Indian law. Only the federal court can give complete relief and, as in *Leiter*, it properly exercised its jurisdiction to prevent state court proceedings that might conflict with its judgment.

CONCLUSION

The decision below is plainly right; it is in accord with this Court's recent *Leiter* decision; and there is no conflict. The petition for a writ of certiorari should be denied.

Respectfully submitted,

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JANUARY 1958

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BRIEF OF AMICUS CURIAE

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1957

No. 682.

LUPE ALONZO, JIM ALONZO, JOE ALONZO and VALENTINO ALONZO, Petitioners,

vs.

UNITED STATES OF AMERICA, Respondent.

On Writ of Certiorari To The Court of Appeals For The Tenth Circuit

FRED M. STANSELL,

Attorney General for the State of New Mexico.

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The United States Court of Appeals for the Tenth Circuit erred in two respects:

One: In holding that under the terms of the Enabling Act for the State of New Mexico the United States did not relinquish control and jurisdiction to the State over lands of Indians which were not acquired by them "through or from the United States or any prior sovereignty"; 4

and

Two: In the holding that even if the United States under the terms of the Enabling Act for the State of New Mexico did relinquish control and jurisdiction over such lands, that control and jurisdiction over this category of lands was reacquired by the United States under the terms of Section 17 of the Pueblo Lands Act of 1924 ..... 4, 5

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vs.

UNITED STATES OF AMERICA, Respondent.

PRELIMINARY STATEMENT

Brief Amicus Curiae In Support Of Petition For Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit.

Comes now the State of New Mexico by its Attorney General and pursuant to Supreme Court Rule 2 (d) files this brief Amicus Curiae in support of petition for Writ of Certiorari in the above captioned case, directed to the United States Court of Appeals for the Tenth Circuit to review the judgment entered September 25, 1957, in the case of Lupe Alonzo et al. vs. United States of America.

The questions presented to this Court which make it imperative upon the State of New Mexico in its sovereign capacity to ask for leave of this Court to file Brief Amicus Curiae are three:

One: The United States Court of Appeals for the Tenth Circuit in its opinion has held that the Enabling Act admitting the State of New Mexico into the Union and so much of the Enabling Act as was incorporated and made a part of the Constitution of the State of New Mexico were by unilateral Act of Congress amended, notwithstanding the bilateral character of the Enabling Act.

Two: The United States Court of Appeals for the Tenth Circuit in its opinion by disregarding the bilateral character of the New Mexico Enabling Act and heretofore recognized rules of statutory interpretation, interpreted the New Mexico Enabling Act and the Constitution of the State of New Mexico contrary to the interpretation given them by the highest Court of the State of New Mexico.

Three: The United States Court of Appeals for the Tenth Circuit by extending the application of three decisions of this Court has diminished the integrity and invaded the powers of the State Judicial system.

Because the last mentioned question is so closely integrated with the legal proposition raised by the real parties in interest, the State of New Mexico at this time will limit its grounds to the first two grounds above enumerated.

By this it is not intended that any inference whatsoever may be drawn that the State of New Mexico is not affected by a ruling on the last numbered question.

STATEMENT OF THE CASE

The petitioner has in its petition for a Writ of Certiorari furnished this Court with a "Statement of the Case". But in order that the position of the State of New Mexico may appear in its proper perspective, the petitioner's statement of the case will be briefly supplemented.

On January 28, 1957, the Alonzos, Indian members of the Pueblo of Laguna, filed a suit in ejectment against the Pueblo of Laguna and its lessee, The Anaconda Company, hereinafter referred to as State 8016.

On February 21, 1957, the United States filed a suit in the United States District Court for the District of New Mexico praying to quiet title to the property covered in State 8016. The Federal suit is hereinafter referred to as Federal 3407. By Federal 3407, the United States further asked the Federal District Court to enjoin the party litigants to State 8016.

During the argument on the order to show cause in Federal 3407, the attention of the United States District Judge was called to Article 21, Section 2, New Mexico Constitution, which is the same as New Mexico Enabling Act, 36 Stat. 567, Section 2.

From an order of the Federal Court enjoining the State proceedings the Alonzos', plaintiffs in State 8016, took an appeal to the United States Court of Appeals for the Tenth Circuit. At that time, the State of New Mexico apprehended that a ruling by the Court of Appeals for the Tenth Circuit would of necessity require an interpretation of the New Mexico Enabling Act and the Constitution of the State of New Mexico, filed a motion in the Court of Appeals for leave to be allowed to intervene or in the alternative for leave to be allowed to file brief amicus curiae.

The State's motion for leave to intervene was denied, but leave was given the State to file brief amicus curiae. Leave was asked by the State for time within which to present oral argument. The Court of Appeals denied this request and because in part the position taken by the State of New Mexico coincided with the position taken by the appellants to the Court of Appeals, the remedy left the State was to ask permission from the appellants for part of their time within which to present its position. The appellants ceded to the State of New Mexico ten minutes of their time for argument.

There after on the 25th day of September, 1957, the Court of Appeals for the Tenth Circuit speaking through Justice Orie L. Phillips filed its opinion and judgment was entered on the same date.

ARGUMENT

A. THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT ERRED IN TWO RESPECTS:

ONE: IN HOLDING THAT UNDER THE TERMS OF THE ENABLING ACT FOR THE STATE OF NEW MEXICO THE UNITED STATES DID NOT RELINQUISH CONTROL AND JURISDICTION TO THE STATE OVER LANDS OF INDIANS WHICH WERE NOT ACQUIRED BY THEM "THROUGH OR FROM THE UNITED STATES OR ANY PRIOR SOVEREIGNTY"; AND,

TWO: IN THE HOLDING THAT EVEN IF THE UNITED STATES UNDER THE TERMS OF THE ENABLING ACT FOR THE STATE OF NEW MEXICO DID RELINQUISH

CONTROL AND JURISDICTION OVER SUCH LANDS, THAT CONTROL AND JURISDICTION OVER THIS CATEGORY OF LANDS WAS REACQUIRED BY THE UNITED STATES UNDER THE TERMS OF SECTION 17 OF THE PUEBLO LANDS ACT OF 1924.

The lands in dispute are lands claimed by the Pueblo of Laguna to have been acquired by it by purchase and claimed by the Alonzos' to be owned by them in fee simple title from a time prior to the Treaty of Quadalupe Hidalgo (R. 10).

The Court of Appeals held the lands to be included within the disclaimer provision of the Enabling Act, 36 Stat. 557, 558, 559, even though they were acquired by purchase. It further held that even if the lands acquired by purchase had come under the jurisdiction of the State of New Mexico like other private lands under the Enabling Act, in effect the Enabling Act of New Mexico had been amended by Section 17 of the Act of 1924. The Enabling Act of New Mexico insofar as pertinent hereto, is attached hereto as Appendix A. Section 17 of the Pueblo Lands Act of 1924 (43 Stat. 636) is attached hereto as Appendix B.

The language of the New Mexico Enabling Act, insofar as the disclaimer provision is concerned, appears to be peculiar to the States of New Mexico and Arizona. It is different from the Enabling Act of such other states as Oklahoma, Washington, Colorado, Utah, Montana, Idaho, Kansas, to mention a few. The Enabling Acts of the last-referred-to states required of the incoming states that they disclaim all lands owned or occupied by Indians or Indian tribes, while the New Mexico and Arizona Enabling Acts required of those two states that they disclaim *only*

those lands owned or held by any Indian or Indian tribes *'the right or title to which shall have been acquired through or from the United States or any prior sovereignty.'*

This same provision was incorporated and adopted by the people of the territory of New Mexico in the Constitution of the State as New Mexico Constitution, Article 21, Section 2, 9. The Enabling Act makes this provision irrevocable without the consent of the people of the State of New Mexico and Congress of the United States. That such provision and Enabling Acts are bilateral compacts has long been established and recognized by this Court. Cf. Stearns vs. Minnesota, 179 U.S. 223; Ward v. Racehorse, 163 U.S. 504; Ft. Leavenworth Railway Co. vs. Lowe, 114 U.S. 525. The effect of the failure to disclaim lands by a state being admitted into the Union is that the United States thereafter even as to lands it may own in fee simple stands in no different position than any other proprietor of land within the territory of the State. In the *Ft. Leavenworth Railway Co. vs. Lowe* case, supra, this Court had occasion to pass upon the precise question raised here and ruled contrary to by the Court of Appeals for the Tenth Circuit. In that case the United States had acquired and created the Ft. Leavenworth military reservation within the Kansas territory. Upon admission of the State of Kansas, the Enabling Act, Act January 29, 1861, Chapter 20, Section 1, 12 Stat. 126, failed to require of the people of the State of Kansas that they disclaim the land occupied by the Ft. Leavenworth military reservation. Whether this omission was through inadvertence or by design was immaterial to the question herein presented. Nevertheless, after the adoption of the Enabling Act by the people of Kansas, the United States recognized the desirability of jurisdiction over the military reservation. At the request of the United States, the State of Kansas by Legislative

enactment[1] disclaimed to the United States the lands occupied by the Ft. Leavenworth military reservation. After this enactment, the State of Kansas sought to impose a tax on the Ft. Leavenworth Railway Company within the Ft. Leavenworth military reservation. The Railway challenged the Constitutional right of the State of Kansas to impose any tax within the reservation. In holding that the State of Kansas had the power to tax within the military reservation, this Court speaking through Justice Field said:

> "The land constituting the reservation was part of the territory acquired in 1803 by cession from France, and, until the formation of the State of Kansas, and her admission into the Union, the United States possessed the rights of a proprietor, and had political dominion and sovereignty over it. For many years before that admission it had been reserved from sale by the proper authorities of the United States for military purposes, and occupied by them as a military post. The jurisdiction of the United States over it during this time was necessarily paramount. But in 1861 Kansas was admitted into the Union upon an equal footing with the original states; that is, with the same rights of political dominion and sovereignty, subject like them only to the constitution of the United States. Congress might undoubtedly, upon such admission, have stipulated for retention of the political

[1] That exclusive jurisdiction be, and the same is hereby, ceded to the United States over and within all the territory owned by the United States, and included within the limits of the United States military reservation known as the "Fort Leavenworth Reservation" in said state, as declared from time to time by the president of the United States, saving, however, to the said state the right to serve civil or criminal process within said reservation, in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed in said state, but outside of said cession and reservation; and saving further to said state the right to tax railroad, bridge, and other corporations, their franchises and property, on said reservation. Laws Kan. 1875, p. 95.

authority, dominion, and legislative power of the United States over the reservation, so long as it should be used for military purposes by the government; that is, it could have excepted the place from the jurisdiction of Kansas, as one needed for the uses of the general government. But from some cause, inadvertence perhaps, or overconfidence that a recession of such jurisdiction could be had whenever desired, no such stipulation or exception was made. *The United States, therefore, retained, after the admission of the state, only the rights of an ordinary proprietor*;" (Emphasis supplied).

The Kansas Enabling Act to which Mr. Justice Fields refers, required of the people of Kansas that they disclaim and that exclusive jurisdiction be ceded to the United States of all lands owned or occupied by Indians or Indian tribes within the territory.*

This Court in The Kansas Indians, 5 Wall. 667, had occasion to comment on the language of the Kansas Enabling Act concerning Indian lands. This Court has held that whenever the United States intended to retain jurisdiction over Indian lands within the territory of a newly created state, the burden was upon the United States to do so by express reservation. In *United States v. McBratney*, 104 U.S. 621, 624, this Court stated:

*Provided that nothing contained in said constitution respecting the boundary of said state shall be construed to impair the rights of persons or property now pertaining to the Indians in said Territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to include any territory which, by treaty with such Indian tribe, is not without the consent of said tribe, to be included within the territorial limits or jurisdiction of any State or Territory; but all such territory shall be excepted out of the boundaries, and constitute no part of the State of Kansas, until said tribe shall signify their assent to the President of the United States to be included within said State, or to affect the authority of the Government of the United States to make any regulation respecting such Indians, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent to make if this Act had never passed.

> "Whenever, upon admission of a state into the Union, Congress has intended to except out of it an *Indian reservation*, or the sole and exclusive jurisdiction over that reservation, it has done so by express words." (Citing the *Kansas Indians*, 5 Wall. 737; United States vs. Ward, 1 Woolw. 17).

Not one of the foregoing decisions of this Court has been modified or overruled. In the case at bar the holding of the Court of Appeals for the Tenth Circuit is not only contrary to the holdings of this court but ignores the legislative history. The legislative history shows that the contracting parties, i.e. the United States and the Territory of New Mexico, had considered and failed to agree on an enabling act such as the opinion of the Court now imposes upon the State of New Mexico.

The Enabling Act of 1906, 34 Stat. 267, provided for the admission of the Territory of Oklahoma as one state and the territories of Arizona and New Mexico as another state. Oklahoma complied with the requisites and became a state. The territories of Arizona and New Mexico failed to comply. Insofar as pertinent herein, the 1906 enabling legislation asked of the three territories that they disclaim all right and title to all lands owned or held by any Indian or Indian tribes. All lands owned or held by any Indian or Indian tribes was to remain subject to the disposition and under the absolute jurisdiction and control of the Congress of the United States. Specifically, the proposed ordinance read as follows:

> "That the people inhabiting said proposed State do agree and declare that they forever disclaim all right and title to the unappropriated and ungranted public lands lying within the boundaries thereof and to all lands lying within said limits owned or held by any

> Indian or Indian tribes, except as hereinafter provided, and that until the title thereto shall have been extinguished by the United States the same shall be and remain subject to the disposition of the United States, and such Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States * * *."

The Act of 1910, which is the Act in question, as compared to the 1906 Act had a radical change. Under it, the United States retained absolute jurisdiction and control of only those lands 'owned or held by any Indian or Indian tribes, the right to title to which shall have been acquired through or from the United States or any prior sovereignty'. Why the United States did not impose the broad demands of the 1906 Act in the 1910 Act is not clear, but the reason is unimportant. The holding of the Court of Appeals interprets the 1910 Enabling Act as if it read the same as the 1906 Enabling Act or as if the 1910 Enabling Act had been amended by the Pueblo Lands Act of 1924, supra, to read as the 1906 Act.

The Court of Appeals, notwithstanding the holdings of this Court, held that in effect although lands acquired by purchase by Indian Pueblos were not specifically mentioned in the New Mexico Enabling Act, that it must have been the intention to include them as part of the disclaimer. The interpretation given the New Mexico Enabling Act by the Court of Appeals for the Tenth Circuit is contrary to the interpretation given it by the Supreme Court of New Mexico in the case of *Trujillo v. Prince*, 42 N.M. 337, 78 P. 2d 145 (1938), in which case, the United States through the Department of Justice aligned itself with the successful Indian party as Amicus Curiae. The language of the New Mexico Supreme Court, insofar as pertinent, is quoted as follows:

"It is to be observed that this provision did not in any wise fetter or limit the Indian if a resident of this state so far as to deny to him any right political or otherwise enjoyed by any other resident of this state. The only restriction was as to his title to land acquired by him by virtue of the laws of the United States or any prior sovereignty and also restricting the power of the state to tax the land of the Indian so held and acquired or which might thereafter be granted or confirmed to any Indian or Indians under an Act of Congress. *With these exceptions there is reserved to the state the power to tax the lands and other property of Indians. This reservation of power in the state implies the consent of Congress to acquisition by reservation Indians of land* and property outside of an Indian reservation and *outside of lands and property granted to him by Congress,* which outside property will become subject to taxation. It is manifest that *it would be idle for Congress to stipulate that the state could tax certain lands* and property of Indians if the Indians are powerless to acquire such lands and property. *The power to tax property carries* with it the power of the state to dispose thereof to *enforce the payment of delinquent taxes. The Courts will be open to the Indian taxpayer to make any defenses which are open to other taxpayers similarly situated.* Such defenses would doubtless be open to the personal representative of a deceased taxpayer. The state could doubtless enforce its claim for taxes against a deceased Indian's estate composed of property not in the field of restricted or qualified ownership. Suit to quiet title to land of Indian delinquent taxpayers acquired at tax sales would not likely be defeated because the Indian taxpayer was dead. His heirs and the administrator of his estate could doubt-

less, in appropriate circumstances, be made parties to such a suit." (Emphasis supplied.)

The holding of the Court of Appeals for the Tenth Circuit being in conflict with the holding of the New Mexico Supreme Court and against the holding of this Court, it is respectfully submitted that a ruling by this Court is immediately imperative. It is immediately imperative because the basic law of the State of New Mexico as well as the State of Arizona has been placed in dispute.

Now the Court of Appeals for the Tenth Circuit held that even if lands acquired by purchase by Indian Pueblos of New Mexico were not included in the Enabling Act, nevertheless by the Act of 1924 they were taken out of the jurisdiction of the State of New Mexico and the United States given such jurisdiction as to enable the United States to impose restrictions against alienation. The lower court's language is quoted as follows:

"* * * But if we be wrong in our conclusion, which we do not concede, that the Enabling Act did not by implication remove restrictions with respect to lands acquired by purchase, such restrictions were clearly reimposed by Section 17 of the Act of 1924 * * *" (43 Stat. 636).

The State of New Mexico contends that this holding of the lower court, to the effect that Congress may unilaterally impose restrictions on lands, sovereignty over which was retained by the State of New Mexico at the time of its admission as a State, violates the compact between the United States and the State of New Mexico.

The Arizona and New Mexico Enabling Acts constitute bilateral compacts entered into between the United States and the States of New Mexico and Arizona. See

Stearns v. Minnesota, supra; Ward v. Race Horse, supra; cf. James v. Dravo Contracting Co., 302 U.S. 134; Collins v. Yosemite Park & Curry Co., 304 U.S. 518, 58 S. Ct. 1099; Beecher v. Weatherby, 95 U.S. 515. The Pueblo Land Act, 43 Stat. 636 is a unilateral act to which the people of New Mexico did not consent.

The holding of the Court of Appeals that the Act of 1924 changed the terms of the compact between the United States and the State of New Mexico ignores the fact that the compact specifically provides that the ordinance in question is "* * * irrevocable without the consent of the United States and the people of said state * * *." 36 Stat. 557, Chapter 310, Section 2. The particular provision making the ordinance irrevocable is but a restatement of a recognized principle of law approved by this Court each time the question has been before it.

The State of New Mexico, like every other state of the Union, is directly affected by such holding. It would be directly affected even by an inference that a bilateral compact by the State and the United States could be unilaterally amended by an Act of Congress.

As already stated under the first part of this brief, this Court has held that enabling legislation is a bilateral compact. cf. *Stearns vs. Minnesota Case*, supra; *Ward vs. Racehorse*, supra; *Fort Leavenworth Railway Co. vs. Lowe*, supra.

It is so well-settled as not to require the citation of further authority that an Enabling Act is a compact between the United States and a state which is bilateral in its nature. Such compact cannot be amended without the consent of the two parties. The holding of the Circuit Court of Appeals that the compact between the United States and New Mexico was amended by Congress through

the 1924 *Pueblo Land Board Act*, supra, in effect is a holding that Congress has the power to amend the compact without the consent of the other party. This holding has cast doubt upon the power of the individual states to govern in accordance with the terms of the compacts between them and the United States for if it is the law that Congress can amend Section 2 of the New Mexico Enabling Act, supra, by a subsequent legislative enactment, without the consent of the State of New Mexico, what restraint is there to the amendment of any other clause or section?

CONCLUSION

In conclusion, the State submits that insofar as the interpretation given the Enabling Act of the State of New Mexico and insofar as the Court has stated than an Enabling Act can be unilaterally amended, this Court must direct the Court of Appeals for the Tenth Circuit to reverse itself or clarify its language.*

Respectfully submitted,

FRED M. STANDLEY,

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State of New Mexico.

*The Court of Appeals like the trial court relied heavily on the decision of this Court in United States v. Candelaria, 271 U.S. 561. Inasmuch as the issue presented in the Candelaria case was a broader one and not limited to the specific question here, and inasmuch as the interpretation and application of the New Mexico Enabling Act was not an issue, the case would not be controlling. However, since the Circuit Court, as well as the Government, has relied on it so heavily, it may be proper for this Court to re-examine the case at this time and a discussion is attached hereto as Appendix C.

APPENDIX A

Section 2 of the Enabling Act in the second paragraph provides:

> "That the people inhabiting said proposed state do agree and declare that they forever disclaim all right and title to the unappropriated and ungranted public lands lying within the boundaries thereof and to all lands lying within said boundaries owned or held by any Indian or Indian tribes the right or title to which shall have been acquired through or from the United States or any prior sovereignty, and that until the title of such Indian or Indian tribes shall have been extinguished the same shall be and remain subject to the disposition and under absolute jurisdiction and control of the congress of the United States; that the lands and other property belonging to citizens of the United States residing without the said state shall never be taxed at a higher rate than the lands and other property belonging to residents thereof, that no taxes shall be imposed by the state upon lands or property therein belonging to or which may hereafter be acquired by the United States or reserved for its use; but nothing herein, or in the ordinance herein provided for, shall preclude the said state from taxing, as other lands and other property are taxed, any lands and other property outside of an Indian reservation owned or held by any Indian, save and except such lands as have been granted or acquired as aforesaid or as may be granted or confirmed to any Indian or Indians under any act of congress, but said ordinance shall provide that all such lands shall be exempt from taxation by said state so long and to such extent as congress has prescribed or may hereafter prescribe."

APPENDIX B

Section 17 of the Pueblo Lands Act reads:

"No right, title, or interest in or to the lands of the Pueblo Indians of New Mexico to which their title has not been extinguished as hereinbefore determined shall hereafter be acquired or initiated by virtue of the lands of the State of New Mexico, or in any other manner except as may hereafter be provided by Congress, and no sale, grant, lease of any character, or other conveyance of lands, or any title or claim thereto, made by any pueblo as a community, or any Pueblo Indian living in a community of Pueblo Indians, in the State of New Mexico, shall be of any validity in law or in equity unless the same be first approved by the Secretary of the Interior."

APPENDIX C

The Candelaria Case

While it is submitted that it is not necessary that the decision of this Court in United States v. Candelaria, 271 U.S. 432, 441, need be overruled in order to give the Enabling Act of the State of New Mexico the proper effect, nevertheless, it may be pertinent at this time to re-examine the decision of this Court in the Candelaria case. The Candelaria case would appear to have been filed some time prior to the enactment of the Pueblo Land Grant of 1924. It reached the Supreme Court not upon disputed questions of fact, but upon stipulated facts certified to this Court by the 8th Circuit Court for the purpose of raising the legal question. That the factual question was not seriously disputed or considered important enough by the party litigants is made evident by the discrepancies between facts as stated by the Supreme Court and the facts as stated by the Circuit Court of Appeals after the question certified to this Court had been ruled upon. This Court treated the lands as lands that had been acquired by grant by the Indians from a prior sovereign, that is, Spain. 271 U.S. 437.

Without pointing out or explaining the discrepancies, the Circuit Court of Appeals treated the lands as lands acquired by the Indians not by a prior sovereign, but by purchase from the grantee of a prior sovereign. 16 (F. 2d) 550. Taking the factual situation presented to this Court in the Candeleria case, its ruling might be proper and do no violence to the Enabling Act of the State of New Mexico. Taking the facts as found by the Circuit Court of Appeals after the case was remanded to it by this Court and the facts as admitted in this case, we find that violence would be done and is done to the Enabling Act of the State if the Candelaria decision is made to apply.

That certain material questions to the case at bar were considered unimportant by the parties' litigants, as well as the Court's in the Candelaria case, is evident from the treatment given by the Supreme Court to the Act of Congress of 1851, 9 Stat. 587.

This Court in the Candelaria case, speaking of the 1834 Indian Intercourse Act (4 Stat. 730, c 161, Sec. 12) stated:

> "This provision was originally adopted in 1834 (4 Stat. 730, c. 161, Section 12), and, with others 'regulating trade and intercourse with the Indian tribes' was extended over 'the Indian tribes' of New Mexico in the Act of 1851. 9 Stat. 587, c. 14, Section 7."

It is evident from the language of the Court as quoted above that the Court treated the 1851 Act as extending the provision of the 1834 Act and other law regulating trade and intercourse with the Indian tribes in their entirety. A reading of the 1851 Act discloses that this was not what Congress did. The Act of 1851 was entitled:

> "Feb. 27, 1851. CHAP XIV — An Act making Appropriations for the current and contingent Expenses of the Indian Department, and for fulfilling Treaty Stipulations with various Indian Tribes, for the Year ending June the Thirtieth, one thousand eight hundred and fifty-two."

Section 7 of this Act reads as follows:

> "And be it further enacted. That all the laws now in force, regulating trade and intercourse with the Indian tribes, or such provisions of the same as may be applicable, shall be, and the same are hereby extended over the Indian tribes in the Territories of New Mexico and Utah."

The Supreme Court was not urged and made no effort to determine where the laws enforced regulated trade and intercourse with the Indian tribes would be applicable, but treated the Act as extending them in toto. In order to determine how applicable such laws might have been, it would have been necessary to determine what treaties, stipulations were being fulfilled as suggested by the title of the act. At the time of the enactment of this legislation, there were no treaties between the Pueblo Indians of New Mexico and the United States but there were treaties by some of the non-Pueblo Indians and the United States. For example, on the 9th day of September, 1850, five months before the enactment of the 1851 Act, the United States had ratified a treaty with the Utahs. Paragraph 4 of the Treaty specifically provided as follows:

> "The contracting parties agree that the laws now in force, and such others as may be passed, regulating the trade and intercourse and for the preservation of peace with the various tribes of Indians, under the protection and guardianship of the Government of the United States shall be as binding and obligatory upon the said Utahs as if said laws had been enacted for their sole benefit and protection. And that said laws may be duly executed, and for all other useful purposes, the territory occupied by the Utahs is hereby annexed to New Mexico, as now organized, or as it may be organized or until the Government of the United States shall otherwise order." (p. 535, Vol. III, Leading Facts of New Mexico History — Twitchell)

The Supreme Court in United States v. Candelaria relied on its prior holding in United States v. Sandoval, 239 U. S. 28, 1913; in the Sandoval case the Court has stated that whether or not the Pueblo Indians of New Mexico had be-

come citizens of the United States "remains an open question."

In the Candelaria case, the Court while relying on the Sandoval case, was not advised that the Indians of New Mexico had by Act of Congress been declared citizens of the United States, Title 8 Section 3, U.S.C.A. Thus, we have in the proceedings at bar Indian litigants as plaintiffs and defendants, but Indians who are citizens of the United States litigating over the right or title to property concedingly claimed to be acquired not within the limitations of the Enabling Act, but without such limitations.

Even if the State of New Mexico is wrong in its position that the lands acquired by Pueblo Indians by purchase were not encumbered by restrictions against alienation, a fact which is not conceded, nevertheless the United States not having reserved for itself the power to control lands so acquired, cannot acquire such control absent the consent of the State of New Mexico.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 682

LUPE ALONZO, JIM ALONZO, JOE ALONZO and VALENTINO ALONZO, *Petitioners*

v.

UNITED STATES OF AMERICA, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF ON BEHALF OF THE STATE OF ARIZONA AS AMICUS CURIAE

STATE OF ARIZONA
By ROBERT MORRISON
The Attorney General
State Capitol
Phoenix, Arizona

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Comes now Robert Morrison, The Attorney General of the State of Arizona, and on behalf of the State of Arizona as Amicus Curiae respectfully adopts the Amicus Curiae Brief filed herein for the State of New Mexico by its Attorney General, Fred M. Standley.

Respectfully submitted,

STATE OF ARIZONA
By: ROBERT MORRISON
The Attorney General
State Capitol
Phoenix, Arizona